

1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY

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11 OHIO PETITION REVIEW  
12 PUBLIC MEETING

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19  
20 Tuesday, November 13, 2001  
21 Evening Session  
22 Venice Room

23 Holiday Inn  
24 175 Hutchinson Avenue  
Columbus, Ohio 43085

Professional Reporters, Inc.  
(614) 460-5000 or (800) 229-0675

1 Moderator: Mr. Rafael P. Gonzales, U.S. EPA  
2 Presenter: Mr. Bertram Frey, U.S. EPA  
3 Panel: Mr. Willie Harris, U.S. EPA  
4 Ms. Jo-Lynn Traub, U.S. EPA  
5 Ms. Cheryl Newton, U.S. EPA  
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1           MR. GONZALEZ: I wanted to sort of  
2   clue you in to what we're doing. We would  
3   normally start exactly at 6:30, but given  
4   that it's the evening and people are rushing  
5   home from work, maybe have a quick bite to  
6   eat before they come over, we'll give them  
7   an extra five minutes, so we'll be starting  
8   at 6:35. This afternoon we had a big crowd  
9   so we started right on the button, but I  
10  think we're going to have a reasonably  
11  good-sized crowd, and so we should be able  
12  to get through the process in a smoother  
13  time frame. So we'll give those folks a few  
14  more minutes before we begin.

15           A quick reminder that if you are  
16  going to make a comment during the comment  
17  period, please pick up your card with your  
18  number on it at the tables out front as you  
19  come in. May I suggest you also pick up an  
20  agenda and errata sheet, and we'll go  
21  through those early on in the presentation.

22           Thanks. Welcome all.

23           (Pause in proceedings.)

24           MR. GONZALEZ: We'd like to start,

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1 ladies and gentlemen, if you could find your  
2 seat. We'd like to begin this public  
3 meeting.

4 Good evening, ladies and gentlemen,  
5 and welcome to the Ohio Petition Review. My  
6 name is Rafael Gonzalez, and I'll be your  
7 moderator for this evening. Before we begin  
8 the process of the public meeting, what we'd  
9 like to do is review with you the agenda  
10 that we've put together for you tonight and  
11 also give you a little information about the  
12 process by which we're going to run the  
13 public meeting.

14 Hopefully everyone has picked up an  
15 agenda. And if you take a quick look at  
16 your agenda, you will notice that on the  
17 back of it, we do have for your information  
18 the nine repositories, the names and  
19 addresses of those repositories. It also  
20 gives you an outline of tonight's  
21 proceedings, and in detail we'll get to  
22 those very shortly.

23 Of course, we encourage everyone to  
24 comment on the Ohio Petition Review. And,

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1     again, we encourage you to, if you do not  
2     have a card with a number on it, please, you  
3     may get one back through the doors at one of  
4     the tables on the outside.

5             We also have, ladies and gentlemen,  
6     two court reporters. We have a court  
7     reporter in this venue -- this entire  
8     process will be recorded -- and immediately  
9     after the presentation, we will be able to  
10    take comments in the Palermo room. For  
11    those of you who do not want to make a  
12    comment in this venue, you can make a  
13    comment in the Palermo room in more of a  
14    private manner. You still will need your  
15    numbers, your cards.

16            Of course, questions and answers and  
17    comments are all part of the official  
18    record. Also, we do have a sign language  
19    interpreter for anyone who may need one.

20            I think I've covered those points  
21    that needed to be covered.

22            The agenda. Also, before I get to  
23    that, I forgot to mention that we do have,  
24    for those interested, the clarification of

1 the errata and updates, which we're also  
2 handing out with the agendas, so you can  
3 pick those up out at one of the tables.

4 And so the agenda itself. The  
5 agenda will begin with a 20-minute  
6 presentation on the draft report. From  
7 there we'll go to a question-and-answer  
8 period. We will set up microphones. I will  
9 quickly review the process for that when we  
10 get to that point in the -- during the  
11 public meeting.

12 Then we'll go to the comment period.  
13 We will go directly from presentation to the  
14 question and answer and then immediately to  
15 the comment period.

16 I'd like to at this point introduce  
17 you, ladies and gentlemen, to the gentleman  
18 who will be giving you the presentation, and  
19 that is Bertram Frey, who is the acting  
20 regional counsel for Region 5, U.S. EPA.

21 Bertram.

22 MR. FREY: Thank you.

23 Good evening. Thank you all for  
24 coming. Always nice to see a good turnout



1     for these public meetings.

2             I'm going to give a brief overview  
3     of the presentation this evening.  There  
4     will be an introduction of my presentation,  
5     a piece on the air programs, our review of  
6     the air programs in Ohio, a piece on the  
7     water programs, on waste programs, a piece  
8     on general enforcement -- that's looking at  
9     the legal offices in Ohio's EPA and the  
10    Attorney General's office -- and, finally, a  
11    bit about EPA's public outreach, the next  
12    steps that we have.

13            Since January of 2000, the United  
14    States Environmental Protection Agency has  
15    been conducting reviews of eight federal  
16    environmental programs administered by the  
17    Ohio Environmental Protection Agency in  
18    response to a petition by four Ohio  
19    environmental groups -- I guess all of them  
20    are represented here this evening -- who  
21    expressed concerns with how Ohio EPA has  
22    implemented those environmental programs.

23            U.S. EPA released the draft report  
24    of our preliminary findings on September 4,

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1     2001. The petitioners raised a number of  
2     concerns with the eight programs. Those  
3     programs are five programs under the Clean  
4     Air Act: Title V Permitting program; the  
5     Prevention of Significant Deterioration  
6     program, which deals with permitting new  
7     sources in clean air areas in Ohio; the New  
8     Source Review program that deals with  
9     permitting new sources in dirty air areas in  
10    Ohio; Standards of Performance for New  
11    Stationary Sources; and Noncompliance  
12    Penalties.

13             With respect to the water program,  
14    the petitioners had concerns with the  
15    National Pollutant Discharge Elimination  
16    System, or the water permit program, the  
17    NPDES permit program in Ohio.

18             And, lastly, with respect to the  
19    Resource Conservation and Recovery Act, the  
20    petitioners had concerns with two programs,  
21    hazardous waste and solid waste.

22             The petitioners' questioned whether  
23    Ohio EPA is implementing these eight  
24    programs appropriately. Among other things,

1 the petitioners question how Ohio EPA  
2 addresses regulated facilities, follows up  
3 on complaints, monitors facilities, issues  
4 permits, sets standards, releases  
5 information to the public, pursues  
6 enforcement, and conducts and oversees  
7 cleanups.

8           Since January of 2000, U.S. EPA  
9 Region 5 has gathered extensive information  
10 from visits to Ohio EPA district offices and  
11 the central district office of Ohio EPA, the  
12 Attorney General's office, and local air  
13 agencies. During these reviews, employees  
14 were interviewed and a large amount of files  
15 on information were looked at. U.S. EPA  
16 also reviewed extensive information  
17 submitted by petitioners and in affidavits  
18 by some of you that are here this evening.  
19 We've probably reviewed well over almost 100  
20 affidavits.

21           The U.S. EPA draft report evaluates  
22 whether or not it is appropriate to initiate  
23 withdrawal proceedings or revocation  
24 proceedings in response to the petition.

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1           We'll next go over our preliminary  
2     findings. Again, this is a summary of them.

3           For the hazardous waste and solid  
4     waste programs under the Resource  
5     Conservation and Recovery Act, we found no  
6     grounds for withdrawal, which doesn't mean  
7     to say that there were not areas for  
8     improvement by Ohio EPA, which we noted.

9           Under the Clean Water Act, again we  
10    found no grounds for withdrawal, provided  
11    that previous commitments made by Ohio EPA  
12    are fulfilled and actions are completed.

13          With respect to the air program, we  
14    found that specific action should be taken  
15    immediately to avoid possible withdrawal of  
16    programs.

17          As to general enforcement, we found  
18    that there was an overall active enforcement  
19    presence in the three programs that we  
20    reviewed. That's air, water, and waste. We  
21    found that the criminal enforcement program  
22    was very good.

23          What are next steps? Well, we tend  
24    to -- this is a preliminary fact-finding

1 stage of our proceeding. We're here to  
2 gather comments and find facts at this point  
3 and make some preliminary recommendations  
4 and some conclusions.

5 But in our final report, we will  
6 recommend -- make formal recommendations on  
7 whether withdrawal proceedings should  
8 proceed or not. Secondly, we want to  
9 respond to your comments. We will prepare  
10 an elaborate response and a summary of all  
11 the comments we hear tonight and we've heard  
12 this afternoon and other comments that we  
13 get during the three-day comment period that  
14 will follow this meeting.

15 We will also review Ohio EPA's  
16 response. They have already submitted about  
17 100 pages worth of responses to us at this  
18 point. But their response to the  
19 allegations are very important because we  
20 must take those into consideration in  
21 deciding whether or not we commence formal  
22 withdrawal proceedings.

23 For example, if they commit to make  
24 some of the fixes that we recommend,

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1 generally -- and they actually follow  
2 through with them, then the matter really  
3 ends there. There's no need to withdraw the  
4 program in that instance.

5 We will also in our final report  
6 make suggestions for program improvements,  
7 and we've already done so preliminarily.

8 Let me go to specifics about the  
9 Clean Air Act enforcement and permitting  
10 program. I'm going to look at the  
11 enforcement issues first.

12 Under the Clean Air Act, we are  
13 looking at five programs, the permitting  
14 program, look at the enforcement of that  
15 permitting program; Prevention of  
16 Significant Deterioration -- that's clean  
17 air areas; new Source Review in dirty air  
18 areas; Standards of Performance for New  
19 Source Performance Standards; and then  
20 noncompliance penalties. And then we'll say  
21 a brief issue about that.

22 With respect to the noncompliance  
23 penalty program, we never delegated that  
24 program to Ohio EPA in the first place so we

1     can't take it away.

2             As to our preliminary findings on  
3     the Clean Air Act enforcement programs, we  
4     had seven basic findings.  First, there has  
5     been a decline -- these are preliminary  
6     findings -- in recent years in Ohio EPA air  
7     inspections, enforcement case conclusions,  
8     complaint investigations, and penalty  
9     amounts.

10            There are potential gaps in Ohio  
11     EPA's legal authority to implement portions  
12     of the delegated New Source Performance  
13     Standard program and the air toxics program.

14            The Ohio EPA has no comprehensive  
15     system or process for identifying PSD, or  
16     Prevention of Significant Deterioration,  
17     sources that have not identified themselves  
18     to Ohio EPA.  Ohio EPA does not have  
19     procedures to check the accuracy of  
20     statements made by regulated entities.  
21     Next, Ohio EPA does not have an adequate  
22     training program that ensures a minimal  
23     level of training and consistency of that  
24     training across the state.

1           OEPA has not provided inspection  
2     strategy, compliance tracking, and  
3     enforcement program plans as part of its  
4     Title V program and application.

5           And, lastly, then, seventhly, Ohio  
6     EPA's Division of Air Pollution Control  
7     currently -- I mean currently, which as of  
8     the date of our review, which I think was  
9     the end of 1999, they had a high level of  
10    certain vacancies with no system in place to  
11    expeditiously fill those vacancies.

12           Well, on the grounds for withdrawal  
13    in the air enforcement part of the program,  
14    if verified, our preliminary findings may  
15    provide the basis for commencement of  
16    withdrawal or revocation proceedings.  
17    However, Ohio EPA has the opportunity to  
18    make definitive commitments to address  
19    concerns. We found no grounds for  
20    withdrawal of the New Source Review program  
21    in the nonattainment area since there are so  
22    few sources and permits that they have given  
23    and in the noncompliance penalty program, as  
24    I'd mentioned before.



1           Now, what are our preliminary  
2     findings with respect to the air permitting  
3     programs? And, again, there are five here  
4     we have problems with.

5           Ohio EPA has fallen behind the  
6     statutory and regulatory timetable for the  
7     issuing of final Title V permits. They are  
8     probably last among number six Region 5  
9     states. Ohio EPA has not implemented a  
10    conforming Phase II acid rain program as a  
11    part of its Title V permitting program, in  
12    particular the program for NOx, or nitrogen  
13    oxide, sources. Ohio EPA is not obtaining  
14    sanitized versions of its Title V permit  
15    applications from applicants with  
16    confidentiality claims to forward in a  
17    timely manner to the public.

18          Fourth, Ohio EPA is including  
19    incomplete statements of basis with Title V  
20    permits. And, fifth, Ohio EPA does not  
21    prohibit by regulation the exclusion of  
22    insignificant emission units from Title V  
23    applications and permits.

24          What are the grounds for withdrawal

1     on the permitting program? Our report  
2     preliminarily concludes that if Ohio EPA  
3     does not address these concerns, they might  
4     form a sufficient basis to initiate  
5     withdrawal proceedings. Certainly Ohio must  
6     issue all of its Title V permits.

7             The findings that Ohio EPA does not  
8     have adequate Phase II acid rain rules for  
9     NOx as part of its Title V program, does not  
10    prohibit by regulation the exclusion of  
11    insignificant emission units, and is not  
12    obtaining sanitized versions of Title V  
13    applications in a timely manner are more  
14    serious in nature and, in our view, require  
15    definite action by Ohio EPA.

16            In regard to the PSD program,  
17    U.S. EPA preliminarily found that Ohio EPA  
18    refused to extend the time for comments on  
19    two PSD permits with complex issues and  
20    might be modifying PSD permits  
21    inappropriately through an administrative  
22    process rather than through a formal process  
23    of public comment and review.

24            What are the grounds for withdrawal

1 under the PSD program? Unless Ohio EPA  
2 addresses these concerns, the U.S. EPA  
3 recommends further investigation and  
4 possible commencement of withdrawal  
5 proceedings or revocation proceedings for  
6 the PSD program.

7 Next I'll turn to Clean Water Act  
8 programs. The petitioners expressed seven  
9 basic concerns with the Clean Water Act  
10 approved programs in Ohio.

11 With respect to the first four, EPA  
12 preliminarily found there was not sufficient  
13 cause to commence withdrawal proceedings in  
14 our draft report. And I'm going to amend  
15 that because I have additional facts since  
16 the draft report that was published on one  
17 of the four.

18 The first is antidegradation, which  
19 are water quality standards issues. We  
20 found no significant grounds for withdrawal  
21 proceedings based on that basis.

22 With respect to total maximum daily  
23 loads, in our draft report which we  
24 published on September 4, we found no

1 grounds. However, there have been changed  
2 circumstances since then. We've gotten sued  
3 two weeks ago in that program, and there  
4 have been -- Ohio has made different  
5 commitments since then, and we have to take  
6 a look at this again between this final --  
7 before our final report. Certainly going to  
8 look at that issue again.

9 We found no grounds on water quality  
10 guidance for Great Lakes issues. And then  
11 we found -- for Section 401 compliance  
12 certifications, we found no grounds for --  
13 preliminarily for the commencement of  
14 withdrawal proceedings there, noting that  
15 states, including -- all states, including  
16 Ohio, have wide discretion regarding those  
17 certifications.

18 Next are the grounds for withdrawal  
19 for commercial animal feed lots. They are  
20 really called CAFOs, or concentrated animal  
21 feeding units, over a certain size,  
22 generally 1,000 animal units. And, again,  
23 there we found no grounds for withdrawal,  
24 provided Ohio EPA meets its existing

1 commitments to issue NPDES permits --  
2 currently they are reviewing six  
3 applications -- and to take enforcement  
4 actions as appropriate. We do note in this  
5 area that those commitments were made about  
6 a year ago and Ohio EPA has done a number of  
7 steps to follow up on those, particularly  
8 with respect to taking enforcement actions  
9 at some CAFOs, for example, Buckeye Egg,  
10 which I believe they are on their fourth or  
11 fifth contempt action in court.

12 Now, are there other grounds for  
13 withdrawal of the NPDES permitting system,  
14 the water permitting system? Well, again we  
15 found nonsufficient cause to commence  
16 proceedings, provided that Ohio EPA resolves  
17 problems with the implementation of  
18 enforcement data and management systems,  
19 provided that they conduct timely review of  
20 electronic reporting of water discharge  
21 monitoring reports.

22 Here the issue was a new -- a  
23 computer system called SWIMS, and I'm not  
24 going to give the acronym, but that's -- and

1 SWIMS -- you've got to take discharge  
2 monitoring reports you get from regulated  
3 entities and you have to follow up for an  
4 enforcement action within one month.

5 In some instances we found that  
6 Ohio, because of the defects in switching  
7 over to this new system, couldn't follow up  
8 within ten months. Now, Ohio EPA is  
9 committed to make improvements and has made  
10 some improvements in that area already.  
11 But, again, we have to make sure that those  
12 improvements are implemented and are  
13 continued.

14 And, finally, they have to improve  
15 the accuracy of information entered into the  
16 U.S. EPA's permit compliance data system.

17 With respect to Resource  
18 Conservation and Recovery Act matters and  
19 the hazardous waste -- I'll get to the solid  
20 waste next -- our findings were based on  
21 review of annual audits for six years --  
22 that's from 1995 to 2000 -- and, again, we  
23 go out every year to review permits and  
24 enforcement files with respect to the RCRA

1     program.

2             Our review is also based on the  
3     evaluation of their overall program and  
4     examination of case-specific information.  
5     In our draft report, you will find we went  
6     over a number of case files, and there are a  
7     number of specific cases. You raised some  
8     of those specific cases. We tried to  
9     address them in our draft findings.

10            Again, we found no specific grounds  
11     for commencement of withdrawal proceedings  
12     in the hazardous waste part of RCRA.

13            Now, on solid waste issues, our  
14     review there is a very limited federal role.  
15     Unlike hazardous waste, we have no  
16     counterpart federal program for solid waste.  
17     There's no permitting at the federal level  
18     of solid waste landfills. So our review was  
19     very limited, and our evaluation -- we did,  
20     however, evaluate the claims, cases, and  
21     overall program, and we found no sufficient  
22     cause for withdrawal there. Again, the bar  
23     is very low to get the program and to keep  
24     the program.

1           As to general enforcement, we looked  
2     at three legal offices, the Ohio EPA Office  
3     of Legal Services, the Ohio Attorney  
4     General's Enforcement Division, and the  
5     Attorney General's Bureau of Criminal  
6     Investigation, those three offices.

7           We looked at the function of those  
8     legal offices. We looked at their case  
9     management practices. We looked at the  
10    types, quantities, and results of actions.  
11    And we looked at the legal perspective they  
12    bring to environmental protection in Ohio.

13          There we found that overall there  
14    was an active enforcement presence in each  
15    program we reviewed and that the criminal  
16    enforcement program was very good. Here we  
17    found in particular that Ohio had over 50  
18    convictions in that five-year period that we  
19    looked at, and their convictions were  
20    balanced among the air, the water, the solid  
21    waste, and the hazardous waste programs.

22          Finally, we want to look at the  
23    outreach EPA is making. There are separate  
24    issues about public participation that we



1     looked at in the report.  So this is a  
2     different -- this isn't Ohio's outreach to  
3     public participation.  This is our own,  
4     regarding this draft report.

5             We have a Web site.  Our Web site  
6     has a lot of information about the Ohio  
7     review, has links to your -- the  
8     petitioners' petition.  It has a number of  
9     our information, and it has the draft  
10    report, which is 225 pages.

11            We have repositories throughout the  
12    state, which I believe Rafael has already  
13    mentioned.

14            We will take written comments for 30  
15    days, and they are due December 13.

16            And, lastly, I want to put up our  
17    Web site address.  You can write this down.  
18    It will be up for a minute or two.

19            And I really thank you for coming  
20    this evening, and we will now start our  
21    question-and-answer session, but not until  
22    Rafael has given us some ground rules here.  
23    So here's Rafael.  Thank you.

24            I'll turn it back to you.

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1                   MR. GONZALEZ:  Thanks a lot.

2                   We thought we'd add a little feature  
3   to our public meeting tonight, and we  
4   thought we'd have a little background music.  
5   For those of you who can hear the rock and  
6   roll next door, we hope that won't be too  
7   much of a problem for us.  We've been  
8   assured that it probably won't be.  They are  
9   playing some good tunes, anyway, if you can  
10  hear from that side of the room.

11                  Let me backtrack now.  We just  
12  finished the presentation, so we do have --  
13  I think I better change mikes.

14                  We'd like to remind you that in the  
15  Palermo room you can give your comment  
16  period starting now in a private venue.  
17  And, incidentally, if you want to get to the  
18  Palermo room, just make two rights.  When  
19  you go out the doors here, make a right, go  
20  down to the first hallway, make a right, and  
21  it's the second room on your left.  That  
22  court reporter will be there all evening to  
23  take those comments.  Again, you will need  
24  one of those cards.

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1           The other thing I failed to mention  
2   early on was that we do have -- for those of  
3   you who have written comments and do not  
4   wish to speak at all, we do have a box.  
5   It's on the right-hand side there. It has  
6   "Ohio Petition Review" -- Bob, you want to  
7   hold that box up real quick so they can see  
8   it.

9           If you'd just walk up at your  
10   convenience and place your written comments  
11   in that box, we will, of course, accept  
12   those, also.

13           The question-and-answer period,  
14   ladies and gentlemen, will be for one hour's  
15   time limit. In order to accommodate  
16   everyone during this phase of the  
17   proceedings, we will ask you to please ask a  
18   question, and if you have two, everyone is  
19   entitled to one follow-up.

20           Now, just very briefly, let me  
21   explain that many times we come up and we  
22   ask -- or make comments instead of  
23   questions, and there's going to be lots of  
24   opportunity for you to make those comments,

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1     and we want to hear those comments.  And  
2     those comments are answered, too, in  
3     writing, actually.  But this is the part of  
4     the proceedings in which we really want to  
5     answer your questions.  So if you will  
6     please ask us questions at this time period,  
7     I think the process for this proceeding will  
8     flow very quickly.

9             Well, I think that we're at the  
10    stage now where I get to talk about some of  
11    the terrific staff we have here, and we do  
12    have -- you probably have seen that we have  
13    quite a few staff here with these EPA badges  
14    on to support, basically, those who will try  
15    to answer the questions that come from the  
16    audience.

17            And I would like to take this  
18    opportunity now to actually introduce to you  
19    the people who will, as I like to say, front  
20    line those questions when they come at them.

21            Of course we have Bertram Frey, who  
22    you have just met, acting regional counsel.  
23    We have Cheryl Newton, associate director,  
24    Air and Radiation.  We have Willie Harris,

1 branch chief, Waste, Pesticides, and Toxics  
2 Division. And we have Jo-Lynn Traub,  
3 director, Water Division.

4 We have two microphones set up,  
5 ladies and gentlemen, for your convenience.  
6 If you could begin to come up to the -- yes,  
7 you guys come on up. These guys are always  
8 trying to squeeze out of this. Come on, get  
9 up there.

10 If you could please just get in  
11 line -- there's not a real big crowd here,  
12 so I think that there's plenty of room.  
13 There are chairs around there. Don't be  
14 bashful. Ask questions. And we'll begin  
15 that process now.

16 One last thing is, with the  
17 microphone, it will work better if you have  
18 it close to your mouth. As you can see,  
19 it's gone. So when you get up here, you  
20 almost have to have it in your mouth.  
21 That's just the way they are. So, please,  
22 when you get up there, if you need some  
23 assistance in having that microphone  
24 adjusted for your height, we have staff

1 people who will assist you in doing that.  
2 Can we now begin this process,  
3 please.  
4 MAN IN AUDIENCE: Can you ask people  
5 to introduce themselves?  
6 MR. GONZALEZ: Absolutely.  
7 Introduce yourself when you come up,  
8 for the court reporter's benefit as well as  
9 the rest of us.  
10 Thank you, sir.  
11 Are we ready?  
12 Sir, are you ready?  
13 MR. HALL: Yes. My name is Skip  
14 Hall from Salem, Ohio.  
15 MR. GONZALEZ: Turn the mike up.  
16 (Pause in proceedings.)  
17 MR. HALL: Yes. My name is Skip  
18 Hall. I'm from Salem, Ohio. I was here  
19 earlier today and brought up a couple issues  
20 about AK Steel in Mansfield, Ohio, and in  
21 Zanesville, Ohio. And since then I've  
22 learned something. I understand that the  
23 Ohio Senate is going to vote on a Bill 151  
24 tomorrow, which will provide a statute of

1 limitations of five years for all violations  
2 that are not moved upon within that time,  
3 and this is basically what I was talking  
4 about this afternoon.

5 The one in Mansfield, Ohio, the  
6 Attorney General's office is doing an  
7 investigation at the Mansfield, Ohio, plant,  
8 according to AK Steel's 10-K, which began in  
9 1996. So we've passed the five years  
10 already without the investigation being  
11 completed.

12 And the other issue was in  
13 Zanesville, Ohio, which has been an ongoing  
14 issue since 1980, and that's 21 years.

15 I would like to also mention that  
16 when we were over in Zanesville, Ohio, we  
17 found that there was a violation of  
18 hexachromium, which was 40 times what the  
19 Clean Air Act allows, and no action's been  
20 taken on that.

21 So this is my question. How are you  
22 going to deal with this? Things are going  
23 to have to move a lot faster in Ohio, or  
24 these folks are going to walk away with no

1 fines, no action.

2 MR. GONZALEZ: Sir, I thank you very  
3 much for your comment, and your comment will  
4 be duly recorded.

5 And I would -- during this phase of  
6 the process, we are actually taking  
7 questions on the draft report. Please  
8 remember, okay, we have worked on and  
9 studied the draft report. And many times  
10 what happens is you have other interests,  
11 and they are rightfully so. But we are not  
12 prepared to always answer those questions or  
13 nor do we have an answer for a particular  
14 question that we have not really looked  
15 into.

16 So, please, we certainly -- with all  
17 due respect, we certainly appreciate your  
18 comment, and it will be for the record, but  
19 we just don't -- at this point in time we  
20 don't have a real answer for you that I  
21 don't think you'd be happy with.

22 MR. HALL: Thank you.

23 I seen a lot of places that you  
24 found that the Ohio EPA was doing a good



1     job. Well, it won't be a good job if these  
2     issues aren't addressed in a timely manner  
3     because the statute of limitations will  
4     abolish it.

5             MR. GONZALEZ: I think your point is  
6     well taken, sir. Thank you very much.

7             MS. WEATHERINGTON-RICE: Hi. I'm  
8     Julie Weatherington-Rice. I'm going to have  
9     some comments later, but I have a question.

10            According to your presentation here,  
11     you think that the solid waste program in  
12     Ohio EPA is okay, and you were commenting  
13     about the fact that there's a very low  
14     threshold for the federal solid waste  
15     program. Are you guys aware that there was  
16     a draft change to 3745.27 that was proposed  
17     to go to JCARR this last summer that in  
18     effect would create under Section 03 the  
19     ability to waive and/or exempt virtually  
20     every siting criteria and construction  
21     criteria that existed in Ohio's rules,  
22     including your own federal ones?

23            And when I brought that to the  
24     attention of Ohio EPA, I was told that it

1 really didn't matter because they preempted  
2 you so your rules didn't hold. Are you  
3 aware that that's out there? And would you  
4 please respond to whether Ohio EPA has the  
5 ability to waive and/or exempt the very  
6 minimal U.S. EPA siting criteria?

7 MR. RUESCH: Yes. My name is Paul  
8 Ruesch. I work in the Subtitle D program  
9 for Region 5. And yes, we are aware of  
10 that, those proposed rules, and we did  
11 comment on those rules to EPA.

12 I want to preface my response, and  
13 try to keep it brief, that Ohio EPA received  
14 approval for its Subtitle D program in June  
15 of 1994, and it met the basic minimum  
16 federal criteria. And Ohio EPA gets no  
17 money from U.S. EPA to implement this  
18 program, and there is no oversight over this  
19 program. I do not review every permit and  
20 every enforcement action of Ohio EPA with  
21 respect to enforcement because of that  
22 limited authority that we have in the  
23 federal laws.

24 However, with respect these changes

1 in respect to the flexibility that the  
2 director has under certain provisions, a lot  
3 of that flexibility has to do with  
4 provisions that are more stringent than the  
5 federal criteria, and we've made it  
6 perfectly clear to Ohio EPA on many  
7 occasions that the basic criteria, the  
8 minimum federal criteria, as I call them,  
9 cannot be waived.

10 And it's an ongoing battle, and it's  
11 an ongoing fight to keep these provisions.  
12 Even if the director were to make some  
13 exemption if this rule were to go through,  
14 there still would be those minimum federal  
15 criteria and the facility that got that  
16 exemption would be subject -- could be  
17 subject to a citizen suit.

18 So we are aware. We are commenting.  
19 And I appreciate you bringing that issue to  
20 our attention, again, in this forum.

21 MS. WEATHERINGTON-RICE: Well, Paul,  
22 you are aware -- or maybe you did not see  
23 the comments back from the -- I think it was  
24 probably the May round that I did point that

1 out. And there was a responsiveness from  
2 Vladimir Cica, or whoever wrote it for him,  
3 that essentially said they have the ability  
4 to override you.

5 So I'm glad to hear that you don't  
6 think they do, but unless things have  
7 changed since I talked to them last summer  
8 about this, they think they do. So I think  
9 that's one very critical component that we  
10 have to resolve here because, clearly -- you  
11 know, as you say, yours are baseline. Yours  
12 are not very stringent siting criteria.

13 If they don't even have to hold to  
14 those, then we don't have any siting  
15 criteria at all. And so I'm very, very  
16 concerned about this. I'm glad to know you  
17 guys are up on it, but I want you to think  
18 about that hard as you look at this siting  
19 criteria and the other solid waste issues  
20 because I know you have a low threshold, but  
21 I'm not sure they meet yours. Okay? Thank  
22 you.

23 MR. RUESCH: We will, and I  
24 certainly appreciate your comment.

1 MR. GONZALEZ: Thank you very much.

2 Another question.

3 MS. WARNOCK: My name is Noreen  
4 Warnock.

5 I've seen many times throughout the  
6 report and in your slides here tonight the  
7 comment that if Ohio EPA addresses your  
8 concerns in the different areas, that  
9 authority will not be withdrawn. What is  
10 the time line for them addressing those  
11 concerns? And if there is a time line,  
12 where does that time line exist so that the  
13 citizens of this state can see a copy of it?

14 MR. FREY: Is this a good mike?  
15 Yes.

16 I think the time line would vary as  
17 to the program. There might be some fixes  
18 that Ohio EPA could make immediately and  
19 others that might take some months to  
20 implement, for example, on the TMDL program.  
21 That's going to take longer than six months,  
22 for example. So there's some commitments we  
23 would hope they make to timetables yet to be  
24 negotiated regarding certain program areas.

1           So I really don't have one answer  
2   for -- it depends on the program. It  
3   depends what part of the air program or so  
4   forth. But I think those issues clearly are  
5   on the table between us and Ohio EPA.

6           MR. GONZALEZ: I think we have a  
7   follow-up here.

8           MS. TRAUB: I think we could say,  
9   though, that when the report is finalized,  
10  we are looking to negotiate schedules and  
11  commitments with the State, and I guess I  
12  would expect to see those documented in the  
13  final report so that we've got something to  
14  hold the State to, in terms of commitments.

15          As Bert said, it may take a long  
16  time to implement them, but we will have  
17  milestones by which to measure their  
18  progress.

19          MR. GONZALEZ: Thank you very much.  
20          We have a question over here, I  
21  believe.

22          MS. WALL: My name is Marilyn Wall,  
23  W-a-l-l.

24          One of our concerns has been permit

1 backlogs, the permits for Title V, operating  
2 permits, and whether or not they will all be  
3 issued by the end of the year, the backlog  
4 in NPDES permits, some of them which have  
5 been at least five years old for facilities  
6 with violations and also the RCRA permit  
7 backlog, and we didn't see much in the way  
8 of recommendations in the draft report, and  
9 I wondered why that is.

10 MS. TRAUB: Actually, on the water  
11 side on the NPDES program, the State has  
12 made some pretty significant progress in the  
13 last year. All of our states in Region 5  
14 have had some issue with permit backlog, and  
15 this is the result of a number of factors,  
16 one being GLI implementation; another, the  
17 fact that we've got so many combined sewer  
18 overflows in Region 5, a huge percentage of  
19 them being in Ohio. We have issues with  
20 mercury. They have just become much more  
21 complex to issue, and so it's going to take  
22 them a bit longer.

23 But what we're seeing is this zero  
24 sum gain where the resources that are needed

1 to do TMDLs and permit backlog and CAFOs and  
2 CSOs just are inadequate. So we'll shift  
3 over and we see the State working hard on  
4 the permit backlog, but then we have a  
5 deficiency in TMDLs.

6 So obviously a longer term solution  
7 will be needed, in terms of resources, to  
8 make adequate progress in all those  
9 different areas.

10 MR. GONZALEZ: Could you, for the  
11 record, tell us who you are.

12 MS. TRAUB: I'm sorry, Jodi Traub,  
13 water director.

14 MS. NEWTON: Cheryl Newton, the  
15 associate director for the Air and Radiation  
16 Division.

17 I think, as was noted in the report,  
18 the issuance of Title V permits is a problem  
19 across the country. And folks in my office  
20 have been trying to work across the regions  
21 with headquarters and with every state for  
22 the last couple of years to try and get at  
23 what is actually getting in the way of  
24 permit issuance. And there is no magic



1     bullet, in response to your question about  
2     why there's no recommendations. Resources  
3     can be an issue in some states, but it's --  
4     it doesn't appear to be a magic bullet  
5     either.

6             The permits themselves are a lot  
7     more complex than originally thought, and  
8     every state in the country is behind and  
9     hasn't met the three-year deadline that was  
10    laid out in the Clean Air Act.

11            What we have tried to do is  
12    periodically consult with the states to try  
13    and get them to set milestones. The states  
14    in Region 5, including Ohio, have taken  
15    different approaches. Some states have done  
16    what I would call some of the easier permits  
17    first, so their numbers sort of peaked in  
18    the very beginning. Other states chose to  
19    do it on an emissions basis and, therefore,  
20    took some of the more complex permits first,  
21    and, therefore, their permit issuance rate  
22    seems slower.

23            So this is a critical issue that we  
24    have been working on with all the states

1     and -- to the extent we even have requested  
2     the IG come in and actually interview some  
3     state programs to try and get to the bottom  
4     of, you know, what are the causes, what can  
5     EPA do to remove barriers, and are there any  
6     lessons learned across states that can be  
7     shared to try and increase the permit  
8     issuance rate.

9             So it's just something that we've  
10    been struggling for. We haven't found a  
11    single answer or a magic bullet, and we're  
12    trying to work on a constant basis to try  
13    and get all of the permits issued.

14            MR. HARRIS: In the RCRA program,  
15    I'm assuming you're referring to permit  
16    renewals, and I must bring it to your  
17    attention that the highest -- the national  
18    priority for issuing permits in the RCRA  
19    program is for operating permits and  
20    postclosure permits, and the Ohio EPA is  
21    doing well in that area.

22            I need to point out to you, also,  
23    that expired permits in the RCRA program  
24    stay in effect until the expired permit is

1 renewed. Therefore, the environment is  
2 still being protected.

3 MS. WALL: Just as a quick  
4 follow-up, did you ask the IG to come into  
5 Ohio?

6 MS. DAMICO: Hi. I'm Genevieve  
7 Damico. I work in the Air and Radiation  
8 Division, dealing specifically with  
9 permitting.

10 We did suggest that Ohio be one of  
11 the states that was looked at for some  
12 concerns. However, they were not chosen by  
13 the IG for that.

14 MR. GONZALEZ: Thank you.

15 We have another question right here.

16 MR. ALTMAN: Two, if you don't mind,  
17 quick questions.

18 MR. GONZALEZ: Well, you'll ask one  
19 question in follow-up, right?

20 MR. ALTMAN: All right. I'll do it  
21 that way.

22 David Altman, A-l-t-m-a-n. Let me  
23 get this microphone out.

24 Bert, this is directed to you. The

1 gentlemen was asking you about Senate Bill  
2 105 before. You and I talked about Senate  
3 Bill 105 earlier this summer in the context  
4 of the petition, number one, just to refresh  
5 your recollection. Senate Bill 105 has a  
6 new version, which the gentleman was  
7 alluding to, which will go before the Senate  
8 tomorrow. And who knows what will happen,  
9 but it will probably pass.

10 It requires a five-year statute to  
11 run when the government authority knows  
12 about or has a fact which is then used to  
13 pursue a violation. So, in other words,  
14 it's not when the violation accrues; it's  
15 when a fact that leads to a violation is  
16 known or told to the government.

17 The question is, could a state with  
18 that kind of a law meet your federal  
19 standard for investigation, when you have  
20 said throughout your report that this is a  
21 resource issue and that this -- sort of this  
22 camel that's already sort of broken down is  
23 having another weight put on top of it, and  
24 you expect it to run a race?

1           How can that be? How can the State  
2   of Ohio, if it's burdened with this new law,  
3   given its lack of resources that you've --  
4   at best, is an excuse for their failure of  
5   performance, how can this be, and how can  
6   they be your partner in implementing federal  
7   law if they have this kind of five-year  
8   statute?

9           MR. FREY: First off, we'd have to  
10   study the exact provisions of the law that  
11   you mentioned, in the event that it would  
12   pass. Obviously, it hasn't passed yet.  
13   Certainly, that might be of concern to us.  
14   We'd have to look at that. That's one I  
15   really can't answer definitively without  
16   looking carefully at the law, which I have  
17   not done so, so -- at the present bill that  
18   was just mentioned earlier today.

19           So that's a hard one for me to  
20   answer in a hypothetical sense.

21           MR. ALTMAN: Okay.

22           My follow-up would be that how  
23   long -- let's take the water act areas. How  
24   long have the SWIM problems, to put it

1     charitably, the problems that U.S. EPA seems  
2     to attribute to the SWIM system, how long  
3     have the lack of inspections, how long have  
4     the other breakdowns that are specifically  
5     noted in the water report, how long have  
6     they been going on in Ohio?

7             MS. TRAUB:  At least a year.  It's  
8     had startup problems.  And, generally, I  
9     think what we would do is ask that the State  
10    continue its other system of reporting, say  
11    its manual system, until all the bugs were  
12    worked out with the new automated system.

13            I don't honestly know why that  
14    wasn't done, but we will certainly nail down  
15    with them a schedule by which they will have  
16    the SWIMS problems fixed or we may have to  
17    return to some other dual reporting system  
18    until that's accomplished.

19            MR. ALTMAN:  I was actually talking  
20    about your litany of problems with water, of  
21    which SWIMS was number one or two.

22            When you go down the list, lack of  
23    inspections, inability to verify information  
24    independently from the violator, all the

1 things you said in your water report, how  
2 long have those particular things been going  
3 on? Do you know what I'm talking about?  
4 Because we could have --

5 MS. TRAUB: I don't know that we  
6 could pin it down to a date. Resources are  
7 such that you'll have improvement in one  
8 part of the water program, and you'll see  
9 significant progress there. At the same  
10 time, there will be some slippage in other  
11 parts of the program simply because of those  
12 resource shifts or because of lack of focus  
13 in those.

14 MR. ALTMAN: I know that's  
15 theoretically true, but I mean exactly how  
16 long have these problems -- can we find out  
17 and can we follow up?

18 We'll follow up with the exact  
19 points in the report and ask you, because I  
20 think this is a critical question, and it is  
21 a true question that needs to be answered so  
22 that we can determine whether your  
23 determination about the water program and  
24 your determination, for that matter, about

1 RCRA, where the same issues exist, are  
2 correct from our perspective.

3 So can we, Bert -- is it fair to get  
4 an answer to that sooner rather than waiting  
5 for the final report to come out to get the  
6 answer? I mean, can you guys tell us, with  
7 each of the deficiencies?

8 MR. GONZALEZ: I think in all  
9 fairness, David, your point has been well  
10 taken, has been made. It's recorded.

11 We will -- when we get back and  
12 begin to review this entire process, I think  
13 you've made enough emphasis on that issue  
14 with our staff that we will review that, and  
15 I'm sure that an answer will be forthcoming.

16 MR. ALTMAN: All right.

17 MR. GONZALEZ: As far as a time  
18 goes, that's -- you know, that's difficult  
19 to actually say. We'll let -- we'll answer  
20 that before the report is out. That's, I  
21 think, difficult for anyone here to answer.

22 MR. ALTMAN: No, I think you already  
23 have the information. That's why I asked  
24 you the question. It wasn't to show anyone



1 up at all. I think you already have the  
2 information, because it makes a  
3 difference -- if it's been broken down five  
4 years and these things haven't been going on  
5 right for five years, it seems that there  
6 are program implications to that.

7 MR. GONZALEZ: Hang on a second. I  
8 think we have someone here who might add  
9 some information.

10 MR. LEDER: On the water part of  
11 it -- my name is Arnie Leder. I'm in the  
12 water enforcement branch at Region 5.

13 On the water enforcement part, Ohio  
14 EPA has already given us some time frames  
15 for correcting many of the problems. If you  
16 look at the response, which is included in  
17 the report, for example, I talked to Randy  
18 Borneek at Ohio EPA last Thursday, and he  
19 indicated that they were currently able to  
20 surface violations that were -- that  
21 occurred this past September, so that means  
22 that the SWIMS system is relatively  
23 operational. It's not perfect. They don't  
24 have all the limits perfectly in their

1 facilities, but they were at least able to  
2 surface violations in a timely fashion  
3 rather than with the seven-month lag like  
4 they were when we went two years ago or a  
5 year and a half ago or did the trip reports.

6 With regard to the permit compliance  
7 system corrections, the State has committed  
8 to correcting those problems with PCS by the  
9 end of this calendar year.

10 With regard to the concentrated  
11 animal feeding operation permitting issues,  
12 the State has, as a result of -- in last  
13 year's program planning process, the plan we  
14 negotiated last year, the State committed to  
15 getting out and conducting inspections to  
16 determine if animal feeding operations were  
17 concentrated animal feeding operations and  
18 taking enforcement as required, NPDES  
19 permits -- NPDES permit applications.

20 The State is currently working and  
21 proposes to issue shortly an NPDES permit.  
22 It's actually under development, and it will  
23 be the first in the state.

24 So at least on those issues --

1                   MR. ALTMAN: I'm not making my  
2     question clear. I beg your tolerance  
3     because I appreciate your answer. Your  
4     answer is very useful, but it's not the  
5     question I was asking, and it's my fault,  
6     not yours.

7                   The question I was asking, how long  
8     have these problems existed, not when are  
9     they going to be fixed, which is very  
10    important, but how long have they existed?  
11    Are they one-year problems, two-year  
12    problems, three-year problems, five-year  
13    problems?

14                  MR. LEDER: I think that varies with  
15    the problem. The problem with the SWIMS was  
16    a problem with implementation of the new  
17    system, you know. So it started when they  
18    went over to the new system. The problem  
19    with the concentrated animal feeding  
20    operation is a problem that goes back quite  
21    some time.

22                  You know, to the extent that we can  
23    date them, I'm not sure that's relevant.  
24    The main thing is we want to get the

1 problems corrected. That's our goal.

2 MR. ALTMAN: You understand what I  
3 was asking?

4 MR. GONZALEZ: Yes. I think we  
5 should probably just let it go at that.

6 Do we have any more questions?

7 We have a question here. Thank you,  
8 sir.

9 MR. GRIFFITH: My name is Mike  
10 Griffith, G-r-i-f-f-i-t-h, Concerned River  
11 Valley Families, and you said you were going  
12 to let it go at that, but there's some  
13 information that I wanted to share along  
14 those same lines. I'm gravely concerned  
15 about this Ohio Senate bill, simply because  
16 during the River Valley Schools  
17 environmental investigation, it became clear  
18 about three years into the investigation  
19 that the Ohio EPA had been aware of the  
20 significant contamination problems adjacent  
21 to that school ground for the last 22 years,  
22 and they failed to tell the public while  
23 that was being investigated.

24 And, Mr. Frey, obviously you're

1     aware of the Judge Phalen decision in the  
2     Paul Jayko whistle-blower case, and you very  
3     clearly probably realize, as I do, that  
4     credibility and honesty issues were very  
5     much a big thrust of Judge Phalen's decision  
6     regarding the Paul Jayko case.

7             And so this Ohio Senate bill  
8     concerns me a lot because if they are able  
9     to go through a very high profile  
10    investigation like the River Valley Schools  
11    investigation and keep information that  
12    pertinent from the public's awareness,  
13    actually lie to the community board that's  
14    put in place to follow what's happening on  
15    that site -- so I guess my question to you  
16    is regarding the U.S. EPA review, were  
17    honesty and integrity issues coming into  
18    this situation.

19            Especially, I'm very concerned  
20    about, you know, if we don't consider those  
21    and just stick to these kind of dry  
22    different stages that you're looking at,  
23    they can get away with these kinds of  
24    things, and this bill that could very well

1 pass the Senate tomorrow will allow -- will  
2 totally cause citizens' rights to vanish  
3 just because they have been lied to and  
4 misled. That concerns me a lot. I don't  
5 know whether I made myself clear, but I hope  
6 you understand what I'm trying to say here.

7 MR. GONZALEZ: I think we got the  
8 gist of what you said. It was a great  
9 comment. I'm not sure that --

10 MR. GRIFFITH: But I guess, you  
11 know, my question is is Judge Phalen's  
12 decision and the honesty and integrity  
13 aspects of the Ohio EPA and the way they  
14 have been operating their program, is that  
15 being considered along some of these  
16 categories that you're looking through?

17 MR. FREY: Insofar as the Judge  
18 Phalen decision addresses a personnel matter  
19 with Ohio EPA, that wouldn't be so relevant  
20 to our inquiry. Insofar as it deals with  
21 programmatic matters with the Ohio EPA as to  
22 their program, that's obviously a relevant  
23 issue that we've looked at and we certainly  
24 will look at and continue to look at in

1 preparing our final report.

2 MR. GRIFFITH: But I guess I'd want  
3 to follow up and say, you know, what can we  
4 do with citizens when we're stuck with those  
5 same people, and they are still in place  
6 doing the exact same thing, even though  
7 we're sitting here with a federal labor  
8 judge's decision that shows that they were  
9 dishonest and not credible. And now we're  
10 about ready to pass a law in the Ohio Senate  
11 that totally banishes our rights after five  
12 years.

13 That's a grave concern to me, and so  
14 what can we do about it as citizens? You're  
15 calling it a personnel matter, but I'm  
16 sorry, it's is an ongoing issue that we're  
17 dealing with as citizens right now.

18 (Applause)

19 MR. FREY: I think we hear your  
20 comment loud and clear.

21 MR. GONZALEZ: Thank you very much,  
22 sir. We appreciate it.

23 I think, Jane, you have a question.

24 MS. REDFERN: Jane Forrest,

1 F-o-r-r-e-s-t, Redfern, R-e-d-f-e-r-n.

2 In your review under the RCRA  
3 section, you noted that there was an overall  
4 trend, a downward trend, that is, in  
5 inspections and violations. And I was just  
6 wondering if you happened to notice that it  
7 was a downward trend. And then, secondly,  
8 did you review the types of violations that  
9 were occurring, and did you see any  
10 particular trends on that and -- statewide,  
11 as far as different district offices, and  
12 what kinds of violations did you find?

13 MR. HARRIS: My name is Willie  
14 Harris, and I'm in our Waste, Pesticides,  
15 and Toxics Division. I'm going to try to  
16 address part of that, and then I'm going to  
17 refer it to our enforcement person that we  
18 have here today.

19 Regarding inspections and Ohio RCRA  
20 inspections, in Ohio EPA's response to the  
21 fact that our chart showed a decline, their  
22 response was that they changed their focus  
23 from small quantity generator inspections to  
24 the large quantity generator inspections.



1 And we're currently evaluating that, but  
2 what I need to point out to you is that the  
3 Ohio EPA is meeting all minimum federal  
4 inspection requirements for generator and  
5 TSD inspections in the state of Ohio.

6 Regarding specific facilities, Mike,  
7 you want to answer the --

8 MS. REDFERN: What about the  
9 violations?

10 MR. HARRIS: The violations?

11 MR. CUNNINGHAM: I'm Mike Cunningham  
12 from the RCRA enforcement section of the  
13 EPA. We did notice that trend, and it was  
14 in the graph that there was a declining  
15 number of inspections specifically between  
16 1999 and the year 2000. We're collecting  
17 additional information on that, and, as  
18 Willie had said, it's the types of  
19 inspections that we're also looking at.

20 There's a basic number -- federal  
21 requirement for inspections of major  
22 hazardous waste handlers, what Willie  
23 referred to as TSDs. These are facilities  
24 that treat, store, and dispose of hazardous

1 waste. There's a requirement for those to  
2 be inspected twice a year, as well as an  
3 agreement between the U.S. EPA and the State  
4 to do a minimum number of what we refer to  
5 as large quantity generators. These are  
6 facilities that generate a significant  
7 amount of hazardous waste. They did meet  
8 those requirements to do inspections of the  
9 major handlers and -- at the large quantity  
10 generators.

11 In the numbers we are getting as  
12 follow-up, we're seeing that the decline was  
13 really in these small quantity and  
14 condition-exempt small quantity  
15 generator-type facilities.

16 So as you pointed out, it's a  
17 decline. It's an issue. It's something  
18 that we're talking to the State about, but  
19 they did meet those minimum federal  
20 requirements for major hazardous waste  
21 handlers.

22 As far as a trend in violation -- or  
23 the types of violations and is there a  
24 trend, a similar type of violation we're

1 finding, we didn't really find any sort of  
2 trend there.

3 We did note -- I think there was  
4 another chart that looked at enforcement  
5 actions, specifically what they call  
6 director's findings and orders. They're  
7 equivalent to our enforcement -- 3000 HA  
8 enforcement orders.

9 There was a high number, I think, in  
10 an earlier year and then a fairly steady  
11 number throughout the previous four years  
12 and actually a couple additional orders in  
13 the year 2000 from previous years. So they  
14 have had a fair consistent number of  
15 enforcement actions along those years. So  
16 those are, again, additional things that  
17 we're looking at and gathering information  
18 on for our final report.

19 MS. REDFERN: Also in your report,  
20 as a follow-up, you found that a number of  
21 RCRA facilities that should have gone  
22 through closure action went through the  
23 voluntary action program. And I am  
24 wondering, you know, what kind of action is

1 U.S. EPA going to take and what right does  
2 Ohio EPA allow -- you know, what right do  
3 they have to allow RCRA, that requires full  
4 disclosure, full public participation, you  
5 know, cleanup standards. What right does  
6 Ohio have to allow companies to go through  
7 that, as opposed to RCRA, and how can you as  
8 U.S. EPA and the RCRA program allow this and  
9 not say there's a problem with RCRA cleanups  
10 in Ohio?

11 MR. HARRIS: Yeah, again, my name is  
12 Willie Harris, and I'm with the Waste,  
13 Pesticides, and Toxics Division.

14 Based on our evaluation, let me say  
15 that we found no inappropriate use of that  
16 program in Ohio. In EPA, we have not  
17 formally allowed RCRA facilities to go  
18 through that program. But I'd like to point  
19 out to you that we do have memorandums of  
20 agreements with other states for the use of  
21 voluntary agreements to clean up certain  
22 RCRA sites --

23 MS. REDFERN: Yeah, I understand  
24 that.

1           MR. HARRIS:  -- as long as those  
2       voluntary agreements are consistent with the  
3       national program.

4           MS. REDFERN:  Right, but Ohio  
5       doesn't have one of those agreements, and --

6           MR. HARRIS:  No, Ohio --

7           MS. REDFERN:  -- sites are going  
8       through, like Vernay attempted to go through  
9       the voluntary action program, and two that  
10      you found yourself -- and I can give you  
11      additional lists of sites that EPA even  
12      actually invited into the VAP.  So I think  
13      there's something a little fishy.

14                (Applause)

15           MR. GONZALEZ:  Thank you very much.  
16      Thank you.

17                Do we have another question?

18                You're up next.  Thank you, sir.

19           MR. PERKINS:  My name is Dan  
20      Perkins.  I live in Licking County, 1/8 of a  
21      mile of Laying Site No. 2 of Buckeye Egg  
22      Farm.  I've lived on the same farm for 53  
23      years.  I've watched the Ohio EPA and their  
24      slipshod operations.  All these years -- for

1 a while they had 56 laying buildings. They  
2 were having problems since 1982. The Ohio  
3 EPA permitted them to come in and put two  
4 more buildings at each laying site. They  
5 are having problems with their lagoon. The  
6 EPA watched them put in what they call  
7 floodgates that were about as wide as a card  
8 table, and it would be like trying to stop  
9 the flow of the Mississippi when it was a  
10 heavy rain.

11 And there have just been one flimsy  
12 operation after another. The EPA permitted  
13 it. I watched them bury dead chickens,  
14 building materials, right next to our farm.  
15 They polluted the creek five or six times,  
16 and this stuff persists.

17 MR. GONZALEZ: Thank you very much,  
18 sir, for your comment. It's been recorded.  
19 And we appreciate that.

20 MR. PERKINS: That's the way it's  
21 been. And it's about time that they clean  
22 up their act.

23 MR. GONZALEZ: Thank you, sir.  
24 Thank you very much.

1 (Applause)

2 MR. GONZALEZ: Do we have a question  
3 here? Sir.

4 MR. PUSKAR: John Puskar.

5 The crowd this afternoon was a  
6 little larger than this one. I heard what I  
7 would call horror stories and frustration  
8 from a lot of people. You have issued this  
9 draft report. How much weight does this  
10 public comment have on this draft report and  
11 all the frustrations and horror stories that  
12 these people are telling you? And hopefully  
13 they will put that in the box.

14 MR. FREY: We will consider each and  
15 every comment you make and take each comment  
16 seriously. So in terms of the weight, the  
17 comments that we get, we have to look at  
18 your comments in relationship to the  
19 criteria for withdrawal or revocation of  
20 programs. We certainly will do that with  
21 each and every comment.

22 MR. GONZALEZ: Thank you, sir.

23 We have a question here.

24 I just want to reiterate one

1     important thing, and that is that please be  
2     assured that your comments are extremely  
3     important to this process. I can assure you  
4     that these people will be reading your  
5     comments and taking them into consideration.  
6     So please be assured of that. I don't know  
7     how else -- I wish I could sort of like wave  
8     a wand so that you will believe us. I know  
9     it's difficult, but please believe us. Your  
10    comments are very important.

11                 Sir, your question.

12                 MR. LITTERAL: Hello. I am Timothy  
13    Litteral from Marion, Ohio.

14                 Maybe I can help you out here a  
15    little bit. We've lost confidence in the  
16    Ohio EPA, okay. What we're asking you is  
17    how much authority does this group have to  
18    correct some very grievous mishandling and  
19    even being accomplices to crimes where  
20    people are dying? What authority do you  
21    have to correct those things?

22                 In other words, they are letting  
23    down. Can you override them on some of  
24    these things, or is it just a matter of you



1       withdrawing federal support?

2               MR. GONZALEZ: That's a good  
3       question. Bert?

4               MR. FREY: Yes, I'll try to answer  
5       that to some extent. Our authority,  
6       particularly in the enforcement area, for  
7       example, we can -- if Ohio EPA doesn't take  
8       an enforcement action on a particular  
9       facility, we can take an enforcement action  
10      if we can find violations.

11              I will note that the last time I was  
12      here for a large public meeting in Ohio was  
13      about three years ago, and I was the last to  
14      speak after about four and a half hours, but  
15      I took good notes for that entire time. And  
16      certainly we followed up on a number of  
17      matters that I took -- that I found out from  
18      that proceeding. And obviously we'll do the  
19      same today. I've heard some other good  
20      issues that we need to look into.

21              So we clearly have enforcement  
22      authorities to look at problems at various  
23      facilities. And we have shown that we would  
24      do that in any number of cases. I know when

1 we sent the petitioners a letter denying the  
2 first part of the petition, we also made an  
3 attachment with all the cases that we heard  
4 about them two and a half years ago and  
5 followed up on. This last December we did  
6 that. So we have those authorities.

7 In terms of our oversight  
8 authorities, which you've also asked about,  
9 this is part of the process. Our  
10 authorities there are to take away a  
11 program, either in whole or in part, in  
12 parts. That's what this proceeding is  
13 about. And it's also about Ohio EPA getting  
14 better fundamentally.

15 So we want to work with Ohio so that  
16 Ohio gets better in each of these areas. So  
17 we do have some authority in a number of  
18 areas.

19 MR. LITTERAL: And to follow up on  
20 that, I'm involved with the River Valley  
21 issue, too. It has been our experience that  
22 the Ohio EPA has been complicit in the  
23 cover-up of the toxicity, the exposure to  
24 the children, the danger to the children

1     that still exists. And children are still  
2     in that campus.

3             That's what I want to know is, do  
4     you guys have the authority, if you find out  
5     what we are saying is true -- and all we're  
6     asking you to do is look into it -- and if  
7     it does turn out to be true, do you have the  
8     authority to move those children?

9             MR. FREY: We have someone from the  
10    Superfund program. As I recall, isn't there  
11    construction on a new school at Marion  
12    undergoing now? I think that's -- I wish I  
13    knew more about that particular facility.

14            EPA has an on-scene coordinator.  
15    That person, however, is not here. We do  
16    have some limitations. Many of you have  
17    raised a number of specific issues in Ohio.  
18    We may have a staff person who knows all  
19    about that facility, and we do in this case,  
20    but that person isn't here at this point.

21            We have people that are here that  
22    worked on -- roughly 40 people worked on  
23    this draft report, and they may have  
24    consulted with a number of colleagues. So

1 we are at a loss sometimes to address a  
2 particular facility, and this would be one  
3 area I don't think we have the exact person  
4 here to answer that exact question.

5 MR. LITTERAL: But you will look  
6 into it?

7 MR. GONZALEZ: Your comments have  
8 been made part of the record. Thank you  
9 very much, sir. We deeply appreciate it.

10 Do we have any other questions?

11 Yes, ma'am.

12 MS. BUCHANAN: Sandy Buchanan,  
13 B-u-c-h-a-n-a-n.

14 I have a question about your review  
15 in the area of criminal enforcement, which  
16 you've said a couple of times, I think, Ohio  
17 has a good program, but the sentence in your  
18 report says this: "Our review to date  
19 suggests that the Ohio criminal enfor- --  
20 environmental program may be considered one  
21 of the best in the nation, although we noted  
22 a decreasing trend in the numbers of  
23 prosecutions since 1995." Doesn't that  
24 statement contradict itself?

1 MR. FREY: I should take this one.

2 The -- what we looked at -- the  
3 comment is -- the basis for that comment is  
4 to look at the prosecutions over that entire  
5 five-year period, roughly 50-some  
6 prosecutions that were successful, with some  
7 jail time, significant jail penalties, and  
8 so forth. We feel that's a successful  
9 program.

10 Other bases for our statement are  
11 that Ohio EPA has a very good criminal  
12 training program, and they help train the  
13 staff in other states, not just Ohio.  
14 That's a good feature. In addition, their  
15 reputation in the enforcement community in  
16 Ohio, amongst the federal enforcement  
17 community and with us, is very good.

18 So that there are number of bases  
19 for that statement that we made regarding  
20 Ohio's very good criminal program.

21 Now -- and we're also looking at the  
22 jail time they seek. In many states'  
23 programs, they don't get as much jail time  
24 or as significant follow-up.

1           And the fourth issue has to do with  
2     the variety of kinds of criminal  
3     prosecutions. We also note in our report in  
4     the executive summary that there is roughly  
5     an equal number of prosecutions, air, water,  
6     waste, and hazardous waste. You find that  
7     in very few programs. That's another  
8     positive of Ohio's program.

9           I think they had a particularly good  
10    year in the first year of our review, but we  
11    find that, overall, that's a significant  
12    number of prosecutions.

13           MS. BUCHANAN: Just to follow up,  
14    I'm not sure how we're supposed to be  
15    comforted by a downward trend for the last  
16    six years, which, you know, is a long time.  
17    So when I look at that and I look at the  
18    findings you made on the backlog of cases  
19    and then we hear that Ohio may be looking at  
20    a five-year statute of limitations, I guess  
21    I'd like to know how that all is going to  
22    factor together when you put those factors  
23    all together.

24           MR. FREY: Again, as I mentioned

1 earlier on that, your follow-up question on  
2 the new law, the possible passage of this  
3 five-year limitation, that's something we'd  
4 have to look very carefully at, if and when  
5 it were passed, to look at the bill, too.  
6 Again, I have to look at the exact language  
7 of that particular bill, which I have not  
8 done so in detail.

9 MS. BUCHANAN: Would the EPA  
10 consider testifying against that, as you did  
11 against Ohio's audit privilege law?

12 MR. FREY: I think that's at this  
13 point beyond the scope of this particular  
14 proceeding. I might talk to you personally  
15 after the conference about that.

16 MR. GONZALEZ: Thank you very much  
17 for your comments, ma'am.

18 We have a question here.

19 MS. WILLIAMS: Hi. My name is  
20 Catherine Williams, with a C. I believe all  
21 problems can be prevented. And I think that  
22 a 20-month investigation as well as a  
23 200-page paper describing the egregious  
24 state of the current Ohio EPA is pretty

1     significant, as do probably most of the  
2     people in this room.

3             What I'm wondering is what steps, if  
4     any, were taken to prevent this state and  
5     the states of other state EPAs from becoming  
6     this terrible, and, also, after considering  
7     what has happened here in Ohio, what steps  
8     you will take to prevent this from happening  
9     again here and in other states.

10            MR. GONZALEZ:  How come these young  
11     guys always ask these difficult questions,  
12     you know?

13            Who wants to take that one on?  I  
14     don't see any hands here?  Bert.

15            MS. TRAUB:  Jodi Traub, Water  
16     Division.

17            Boy, that's a tough one.  First of  
18     all, I guess I should say that Ohio, in the  
19     water areas, is really not different or  
20     better or worse than the other states in  
21     Region 5.  The water program right now is  
22     simply so complex with all the issues we're  
23     talking about that the program has gotten  
24     behind the eight ball, and this is true



1     nationally. We have a permit backlog. The  
2     pace of TMDLs in the regions that haven't  
3     been sued is very, very slow.

4             So it's been a gradual, I think,  
5     occurrence as things became more complex and  
6     difficult to deal with. So I wish there was  
7     a simple, straightforward answer to that.

8             I can tell you we are working  
9     closely with the states day in and day out.  
10    We're looking at ways to plug the gaps with  
11    our own limited EPA resources. We're  
12    looking at ways to prioritize so the very  
13    worst problems get solved before the lesser  
14    ones. So we're looking for efficiencies in  
15    the program and we're looking for more  
16    resources.

17            But it is a very complex situation  
18    to deal with, and you're absolutely right,  
19    once we solve a problem, we need to figure  
20    out a way to prevent it in the future. But  
21    we'll need a lot of help to do that.

22            MS. NEWTON: I would second  
23    everything that Jodi said. We do review  
24    state programs on an annual basis,

1 particularly in regard to what they commit  
2 to doing with the federal resources that  
3 they receive. We have also done periodic  
4 reviews of the permit programs. Region 5  
5 covers six states, and we try and go to two  
6 states each year. And at various times,  
7 we've also done different types of  
8 enforcement reviews, file reviews, and as  
9 individual cases have come up. What is  
10 unique about this circumstance is you have a  
11 comprehensive review of all the media  
12 programs in a particular state concentrated  
13 on a period of time.

14 I think there's some lessons that  
15 we'll be able to learn to improve our review  
16 of the program as we do them on those annual  
17 basis, bases, and so that -- this has been a  
18 valuable experience for us, and we'll just  
19 incorporate them into our future reviews of  
20 the other states as well.

21 MR. HARRIS: Again, my name is  
22 Willie Harris. I'm with our Waste,  
23 Pesticides, and Toxics program.

24 What's the RCRA program doing? In

1     addition to the 20-month evaluation that you  
2     alluded to that all the programs did to  
3     address the allegations from the  
4     petitioners, in the RCRA program, we conduct  
5     annual evaluations of the Ohio EPA's  
6     hazardous waste program. In fact, we  
7     conduct semi -- we conduct two evaluations  
8     per year. There is a mid-year evaluation,  
9     where we sit down with Ohio EPA and discuss  
10    what problems they might be having, and if  
11    they are having problems, we try to deal  
12    with them at that time. And then at the end  
13    of the year, we have an end-of-year  
14    evaluation to determine just how well the  
15    program is progressing.

16           MS. TRAUB: I want to add something  
17    since I've had a minute to think about your  
18    hard question. And this is just from my own  
19    experience and perspective, but I have found  
20    that the state programs as well as sometimes  
21    the federal program is very reactive. We're  
22    always managing based on crises, you know.  
23    It's turn your attention here, turn it  
24    there. And I think oftentimes we don't have

1 a very good long-term plan with actual  
2 measurable goals.

3 And what we're trying to do now with  
4 the states and the water programs is to set  
5 these measurable goals, outcome-based goals,  
6 and gather data and have a more realistic  
7 plan instead of being so reactive. In fact,  
8 we're spending the next two days -- I'm  
9 bringing up my entire management team to  
10 meet with Ohio EPA to focus on what are we  
11 going to do about all of these problems and  
12 priorities and come up with a longer term  
13 game plan.

14 So I think in the end you will see a  
15 much better run program when we're being  
16 thoughtful about it and planning it out and  
17 measuring it instead of reacting all the  
18 time to what's the hottest thing going on.

19 MS. WILLIAMS: I have just a couple  
20 comments to say. One is that --

21 MR. GONZALEZ: Well, you have one  
22 follow-up, right?

23 MS. WILLIAMS: Follow-up, sure.

24 I forgot your name, in the purple?

1 MS. TRAUB: Jodi.

2 MS. WILLIAMS: Jodi, okay. You said  
3 about our state not having worse -- a worse  
4 EPA than other states, my only comment is  
5 pollution is pollution, toxins are toxins,  
6 no matter how much or how little. And if  
7 other states are at the same point we are,  
8 that's disgusting.

9 The other thing I have to say is  
10 that education is a huge part in this. And  
11 people can do their own jobs here. I think  
12 the Ohio EPA needs to have -- or the U.S.  
13 EPA needs to have an educational program  
14 that teaches the public what they can do,  
15 how they can be better at this.

16 (Applause)

17 MS. WILLIAMS: If we raise people to  
18 start young, they are not going to become  
19 employers that are going to be  
20 environmentally unfriendly.

21 MR. GONZALEZ: Thank you very much  
22 for your comment. Very much appreciated.

23 (Applause)

24 MR. GONZALEZ: Ladies and gentlemen,

1     just to check, we have maybe about roughly  
2     ten minutes left, so can I get a show of  
3     hands as to how many more questions we have?  
4     We have obviously two, three, we have four,  
5     we have five.  Going once, going twice?  We  
6     have five, right?

7             Okay.  So, sir, you're up next, sir.

8             MR. POCISK:  Mine is more of a  
9     comment than a question.  My name is Jeff  
10    Pocisk, P-o-c-i-s-k.

11            You put up things like inspection  
12    declines, but I think you're missing part of  
13    the picture when you don't put up  
14    manufacturing sector declines, when you  
15    don't put up facilities that are no longer  
16    in business today that are also declining.

17            It's got to be an average,  
18    inspections per number of facilities, to see  
19    what that average is.  Just to put a decline  
20    in inspections gets people upset.  What they  
21    don't understand is that there used to be  
22    200 facilities before.  Today there's only  
23    100.  And that's the whole basis of the  
24    state of Ohio, is the loss of manufacturing

1 jobs. Large quantity generators aren't out  
2 there anymore. TSDFs are going out of  
3 business in Ohio. A lot of business that  
4 was in Ohio before is no longer here.

5 So it makes sense, inspections do  
6 decline. So you have to, in the final  
7 draft, put that in there. You are missing  
8 the whole picture.

9 MR. GONZALEZ: Thank you very much  
10 for your comment, sir.

11 Next? Miss?

12 MS. LANAHAN: My name is Trish  
13 Lanahan, L-a-n-a-h-a-n.

14 My question is in regards to the  
15 River Valley School District issue up there  
16 in Marion, Ohio. I know that you've  
17 commented before that you don't really know  
18 that much about the situation, but it's kids  
19 on toxic waste, and there is high levels of  
20 trichloroethylene and benzopyrene found  
21 about 90 times higher than the acceptable  
22 level in the parking lot where the kids are  
23 getting dropped off every day.

24 And my question is isn't it normal

1 EPA procedure to evacuate the premises while  
2 the investigation is going on until you find  
3 conclusive evidence that it is safe for kids  
4 to be there?

5 MR. GONZALEZ: You know, we'll  
6 accept your comment and your question at the  
7 end as part of the record, but I think I had  
8 mentioned earlier that we, for this session,  
9 can only or would like to address the issue  
10 with regards to the Ohio Petition Review.  
11 And that comment and question are sort of  
12 outside the scope of what any of us here  
13 could possibly answer.

14 MS. LANAHAN: Okay. Well, this is  
15 just a basic inquiry.

16 MR. GONZALEZ: This is your  
17 follow-up.

18 MS. LANAHAN: This is my follow-up,  
19 whatever.

20 Is it or is it not normal procedure  
21 for a site to be evacuated until it is found  
22 to be safe or unsafe?

23 MR. FREY: Okay. Let me try to  
24 answer that question. There are a number of



1 instances where we would conduct an  
2 evacuation -- this would be in the Superfund  
3 conducts -- if there's an imminent  
4 substantial endangerment at that site. So  
5 it somewhat depends on that. So, again, it  
6 depends on the factual circumstances of the  
7 particular case.

8 I will say that since Bhopal in  
9 1984, there have been more instances  
10 reported at the National Response Center  
11 where there's been a death or there's been a  
12 serious bodily injury, or where there's been  
13 an evacuation, which I think gets to your  
14 question, as a result of toxic substances  
15 being emitted into the environment.

16 So I'll try to answer the question  
17 in terms of it's really more a site-specific  
18 issue on is there an imminent substantial  
19 endangerment and how do we address it in  
20 this particular instance. There's not a  
21 real pat answer I can give you, absent the  
22 facts of the situation. It's really a  
23 case-by-case.

24 MR. GONZALEZ: Thank you very much.

1 Thank you for your question.

2 Thank you for your answer.

3 Sir, you're up next.

4 MR. HYLAND: My name is Bob Hyland.

5 Could you please refresh my memory  
6 on how the preliminary report addresses the  
7 Ohio EPA's complaint procedure, in other  
8 words, citizen complaints for odors or  
9 effects of toxins in their community, how  
10 that's addressed in the report?

11 MR. BRATKO: I'm Jeff Bratko. I'm  
12 with the air enforcement program.

13 We did look at that issue because we  
14 were concerned because of all the complaints  
15 about the process. And we did feel that  
16 citizens didn't have good information about  
17 how they could file complaints in Ohio.

18 Ohio's made some indication that  
19 they are going to put improved information  
20 on their Web site and put improved  
21 information in brochures that they  
22 distribute that would better inform people  
23 about how they could file complaints.

24 We did look at verified complaints

1     and we looked at the normal complaints that  
2     anyone could call in, without following the  
3     verified complaint procedure, and certainly  
4     we made recommendations for how they could  
5     be improved.

6             But there isn't a legally mandated  
7     procedure for handling complaints. There is  
8     a requirement that there be a process in  
9     place, but the law doesn't specify in great  
10    detail what that process must be.

11            MR. HYLAND: Then my follow-up to  
12    that is I know at one point in time the  
13    Hamilton County Department of Environmental  
14    Services was successful in identifying the  
15    source of an odor in 10 percent of the  
16    complaints they received, which is very low.  
17    10 percent of the time somebody called in an  
18    odor complaint, the DES was able to identify  
19    the source of that complaint.

20            With what confidence can we leave  
21    this meeting, knowing that -- I'm assuming  
22    that those complaints were -- they followed  
23    the verified complaint and that information  
24    comes from the DES, so they must have been

1     legitimate. With what confidence can we  
2     leave this meeting knowing that if we call  
3     in a complaint, that we have better than a  
4     10 percent chance that the Department of  
5     Environmental Services is going to come out  
6     and find where that odor is coming from and  
7     the toxins that that odor may represent?

8             MR. BRATKO: I don't believe we made  
9     a finding in our report like that. The  
10    problem of investigating odor complaints is  
11    one of the most difficult problems that any  
12    air agency has. Odors aren't well regulated  
13    in general. That's a problem. But the  
14    other problem is that by the time an  
15    inspector gets out, even if they really move  
16    fast -- and the fact is the Hamilton County  
17    agency has probably one of the faster  
18    response times that we found.

19            MR. HYLAND: Is that on account of  
20    the large number of complaints?

21            MR. BRATKO: No, that's because they  
22    have a 24-hour response service that other  
23    agencies don't have. So they go out there  
24    even to complaints that come in at night,

1       which isn't common. That's not something  
2       most agencies do.

3               MR. HYLAND: Well, that's because  
4       it's -- there's a lot of odors.

5               (Laughter)

6               MR. GONZALEZ: Thanks a lot. That's  
7       a good try. You get an A for that one.

8               We have a question over here.

9       Ma'am.

10              MS. MILLS: I think my question is  
11       very similar to the last gentleman's.

12              It's Teresa Mills. Sorry.

13              In the report, you talked about  
14       citizens being overcharged for copies, I  
15       think, in general, basically the way  
16       citizens have been treated. And I think  
17       that's what you're hearing this afternoon  
18       and today, is how citizens have been treated  
19       by the Ohio EPA, not only in having to dig  
20       information out, but their blood and their  
21       sweat and their tears and their anger, which  
22       you've heard today.

23              Is there anything that your agency  
24       will attempt to do to correct that

1 situation? Is there anything that you can  
2 do on Ohio EPA's public information center?

3 MS. NEWTON: I'm Cheryl Newton from  
4 the Air and Radiation Division.

5 I have two tracks that we're going  
6 to be taking. Obviously, there is some  
7 minimum threshold regarding public  
8 involvement and public complaint processes  
9 that we have sort of a hook around which to  
10 compare the state program. And that's what  
11 you see, some of which is documented in the  
12 report. And there's other things that we've  
13 sort of made Ohio EPA aware of where their  
14 own agency is perhaps inconsistent with  
15 their own policies and guidances. And they  
16 have indicated that they are going to make  
17 those changes.

18 The other track, though, I think, is  
19 in concert with what we're hearing here,  
20 what you have already, you know, told Ohio  
21 EPA, is to have some pretty frank  
22 discussions with them about how they might  
23 be able to improve their public  
24 participation process, their public

1 involvement, that go beyond the minimum  
2 requirements. It's something that I would  
3 try to make very hard the case to Ohio EPA  
4 it's worth just as much investment as they  
5 make -- I was talking with somebody this  
6 afternoon earlier about how they were very  
7 comfortable with the effort that Ohio EPA  
8 made on behalf of their company to resolve  
9 some issues.

10 I would tell Ohio EPA if they took,  
11 you know, a portion of that and invested it  
12 in some of the responsiveness to the people  
13 in this room, it would go a long way to  
14 addressing some of the issues that we're  
15 hearing today that I don't have the legal  
16 hook for, but I can certainly try to make a  
17 case that it's just good common sense for  
18 the work that we're about.

19 MS. MILLS: And just one follow-up,  
20 slip in a quick comment. When you talk  
21 about verified complaints, I filed a  
22 verified complaint seven years ago, and it  
23 has yet to be answered.

24 MR. GONZALEZ: Thank you very much.

1           How many more people do we expect to  
2     make -- given that we've just about run out  
3     of time? We have this young lady, and we  
4     have two, we have three. And -- okay. That  
5     will be the final three, then.

6           Ma'am, you're up first.

7           MS. KING: Suzanne Studer King.

8           It's no secret that Ohio has had  
9     some problems with its CAFO permitting  
10    program, some of which were addressed in the  
11    reports, one of which, of course, is lack of  
12    resources and staffing, which has been  
13    compounded by the legislature's move to  
14    shift that program to ODA.

15          Now we're down to, I think, two  
16    staff for the entire state, and that  
17    program -- it's yet unknown how long it will  
18    take for the delegation from U.S. EPA to  
19    ODA. What in the meantime is your agency  
20    going to do to ensure that there is adequate  
21    enforcement and compliance and monitoring  
22    and inspections, given the lack of resources  
23    at Ohio EPA?

24          MS. TRAUB: Jodi Traub, again, Water



1 Division.

2 We have had a very frank discussion  
3 with the State about maintaining a very  
4 aggressive CAFO program until such time as  
5 it's transferred to the Department of Ag. I  
6 did hear that they were starting to  
7 disinvest in the program in anticipation of  
8 that transfer, and we said that that is not  
9 acceptable to us. We have negotiated as  
10 part of their 106 grant a certain level of  
11 inspection, enforcement, and permitting work  
12 that they will be doing. We know they have  
13 several permits on their desk. We are  
14 watching those closely to make sure that  
15 those get issued in a timely manner, and you  
16 have my guarantee we'll keep the pressure  
17 on.

18 At the same time, I had a very frank  
19 dialogue with Ohio EPA and the Department of  
20 Ag on the phone at the same time and made it  
21 clear to the Department of Ag that we will  
22 not approve any transfer until they have the  
23 authority and capability, and I want to  
24 ensure that that happens, that they will be

1     issuing permits before we transfer it.  So  
2     we will keep the pressure on both agencies.

3             MR. GONZALEZ:  Do you have a  
4     follow-up?

5             MS. KING:  One quick follow-up.

6             There was a notice of violation  
7     issued by your agency earlier this year on  
8     the air side, an air permit to Buckeye Egg,  
9     and there's been no word since then.  I'm  
10    wondering if your review looked on the air  
11    side at Title V permits for CAFOs.

12            MS. NEWTON:  Let me start with what  
13    I know.  What we did is we issued a  
14    violation that was basically an entree into  
15    having Buckeye perform some testing that was  
16    going to provide some actual national  
17    information on what kind of air emissions  
18    can actually be found from these types of  
19    sources.

20            Once we get that emissions  
21    information, we'll be able to do a better  
22    job of determining whether or not the air  
23    emissions from such sources actually meet  
24    the threshold for being major sources that

1     require permits. So we really see Buckeye  
2     and the testing that we're having them do  
3     through this NOV process as really sort of  
4     laying the groundwork for the whole arena of  
5     looking into whether or not there are  
6     actually air permitting issues in relation  
7     to those kinds of sources.

8             MR. GONZALEZ: Thank you very much.  
9     Thank you.

10            Our final two questions, where are  
11     they? Please step forward.

12            MR. SAME: Good evening. My name is  
13     Robert Same, S-a-m -- as in Mary -- e, from  
14     Columbus. I have one key question. It's  
15     probably not to partake at this here forum,  
16     but I'd like to know where our tax money  
17     goes for these environmental projects.

18            MR. GONZALEZ: Is there --

19            MR. SAME: It's my understanding  
20     that they claim there is, like, a lack of  
21     resources and money to go through with these  
22     projects. But we all are taxpayers. We pay  
23     money into these. Plus, if I'm not  
24     mistaken, I think we passed a bill a couple

1     years ago for EPA for the state of Ohio, for  
2     a cleanup of hazardous and things like that  
3     so we don't have another situation like we  
4     had up in River Valley.

5             MR. FREY: That's a very general  
6     question, and I think you may refer, in  
7     part, to a \$400 million bond issue passed by  
8     Ohio for various projects, including  
9     environmental projects. I don't think  
10    that's a matter that we review specifically  
11    in this manner -- in this undertaking.  
12    That's one -- I think that's what you're  
13    referring to. I'm not entirely sure.

14            In terms of the money that we give  
15    Ohio EPA, it's about \$60 million -- well, in  
16    Ohio, \$60 million -- about \$56 million is to  
17    Ohio EPA. So if you're looking at federal  
18    tax monies that go to Ohio for environmental  
19    programs, specifically to fund programs in  
20    Ohio, that's the rough dollar amount that we  
21    have.

22            MR. GONZALEZ: Thank you very much,  
23    sir. We appreciate your question.

24            MR. SAME: Thank you.

1           MR. GONZALEZ: And our final  
2 question for this evening.

3           MS. ARNETT: She also wanted to ask  
4 something really briefly after me.

5           MR. GONZALEZ: Okay. We'll  
6 accommodate that.

7           MS. ARNETT: My name is Karen Arnett  
8 from Cincinnati.

9           This is a follow-up to Teresa Mills'  
10 comment and question about treating the  
11 citizens as viable, maybe, participants in  
12 this process, and I sort of heard a response  
13 about increasing responsiveness to citizens,  
14 and I want to just ask you, pretty please,  
15 don't just beef up your public affairs  
16 program. Please be responsive to us by  
17 enforcing the laws and making us feel like  
18 our concerns are really valid and don't just  
19 give us a nice, sugar-coated sort of  
20 responsiveness. Thank you.

21           (Applause)

22           MR. GONZALEZ: Thank you very much.  
23 And our final question.

24           MS. WHETSTONE: I'm Brandi

1 Whetstone. Hopefully this will be an easy  
2 one to answer.

3 I just want to know, when is the  
4 transcript available to the public for this  
5 event?

6 MR. GONZALEZ: Well, for this event  
7 the transcript probably -- I would say  
8 probably won't be available for at least a  
9 good six weeks. I would think maybe four to  
10 six weeks.

11 And the transcripts of this probably  
12 can be found in the repository, and on the  
13 Web site, yes, of course, and on our Web  
14 site. And -- does that answer your  
15 question? Four to six weeks, repository, on  
16 the Web site. And you know what we'll do is  
17 we will post on the Web site a notice as  
18 to -- as we get closer to when we'll have  
19 that available on the repository, we will  
20 post that, because I know the guy there. He  
21 is a good friend of mine. He will do that.

22 MR. ALTMAN: Just one question. If  
23 it's four to six weeks, that would be after  
24 the 30-day comment period, and the groups

1     that are here and have been here all day  
2     definitely want to be able to make use of  
3     the official transcript. It will help you,  
4     also help us, give you a better comment  
5     because this is the end of the show before  
6     you do your final report.

7             So whoever is in charge of that  
8     policy, we would pray that they would  
9     reconsider by expediting the transcript or  
10    lengthening the comment period.

11            MR. GONZALEZ: One second. The  
12    30-day comment period ends --

13            MR. FREY: December 13.

14            MR. GONZALEZ: -- December 13.

15            MR. ALTMAN: By my calculation, that  
16    will be about 30 days from now.

17            MR. GONZALEZ: So what you're asking  
18    us to do is within two weeks after that date  
19    to have all this information digested and  
20    make a draft.

21            MR. ALTMAN: No, no, no, no, no.  
22    No, just the transcript. That's all the  
23    we're --

24            MR. GONZALEZ: Oh, this transcript.

1 MR. ALTMAN: Yeah, the expedited --

2 MR. GONZALEZ: I'm sorry.

3 MR. ALTMAN: No, the expedited -- if  
4 it can be expedited --

5 MR. GONZALEZ: We have an answer for  
6 you right here.

7 MR. ALTMAN: Great.

8 MS. SPEIZMAN: I'm Elissa Speizman.  
9 I'm the director of the Office of Public  
10 Affairs.

11 That's a very valid point that you  
12 make, Mr. Altman, and we will make every  
13 effort to get it up as quickly as we can.  
14 And if it's any way at all possible, it will  
15 certainly be up before the 30 days. As soon  
16 as we do know when we will get the  
17 transcript from the court reporter, we will  
18 let you know, and we'll put that information  
19 on the Web site to let you know when we'll  
20 actually have the transcript up on the Web  
21 site.

22 MR. ALTMAN: Just on behalf of my  
23 various clients that are here, I want to  
24 make the request that we have the transcript



1 in time to read it, and it's going to be  
2 quite a job to do that, but that's our  
3 problem, and we want to incorporate certain  
4 excerpts that will be in the transcript  
5 because we were listening and heard -- we  
6 want to say exactly what's in the transcript  
7 and give it back to you in a way that will  
8 help you and also help us, presumably.

9 So we want to be sure -- those are  
10 our goals or our interests. And so if we  
11 can accommodate those interests on behalf of  
12 my clients who are telling me this in the  
13 back of the room, we would very much  
14 appreciate it if we could be sure we have  
15 the transcript in time to use it in order to  
16 make final comments to you.

17 MR. GONZALEZ: Thank you very much.

18 Okay. I think that then completes  
19 the question-and-answer period.

20 We would like to move on to the  
21 comment period and just cover a few of the  
22 ground rules for the comment period.

23 Of course, everyone should have a  
24 card with a number on it. The second would

1     be that for the question-and-answer period,  
2     we would like you to use an odd number,  
3     which will be to your left microphone, and  
4     the right number during the comment period  
5     to use the right microphone, for those of  
6     you who have numbers that are even numbered.

7             Did everybody understand that?

8     Maybe I should say that again.

9             If you have an odd number, use the  
10    left microphone. If you have an even  
11    number, use the right microphone.

12            Bert, don't talk to me when I talk.

13    All right.

14            The other thing is because -- now,  
15    we're in much better shape this evening than  
16    we were this afternoon. So we do have --  
17    although we do have a three-minute time  
18    period, just to make sure we get everybody  
19    in to make a comment, we would like to keep  
20    it at three minutes, and when you get to  
21    about two and a half minutes, one of the  
22    two -- the staff person standing by --  
23    sitting by your microphone will actually  
24    flash a little pink card. They will put it

1     in your vision, and that will sort of signal  
2     to you that you have 30 seconds in which to  
3     finish your thought or finish your sentence  
4     or just pretty much wrap it up.

5             Okay. Let me then explain the last  
6     final process here before we go into the  
7     comment period. For those of you who want  
8     to give up your comment time to another  
9     person, we will certainly accommodate that.  
10    The only thing we ask is that only -- the  
11    person who receives that three minutes from  
12    you will have to wait till everyone finishes  
13    their comment. No one person can receive  
14    more than one additional comment card or  
15    receive a card, so that, theoretically, a  
16    person can speak, really, for six minutes.

17            And, actually, once we're done with  
18    the initial -- I think we have 30 people who  
19    want to comment. Once we get past that, and  
20    if we do have anyone who does give their  
21    numbers up, we will take those in order, but  
22    once we get through that process, if we have  
23    time remaining, we will, of course, permit  
24    people to come up and make additional

1        comments because we will be here until 9:30  
2        tonight.

3                So given that, I think I've covered  
4        everything. If you would take your card and  
5        please move forward. We have plenty of  
6        seating room. We can really almost  
7        accommodate just about everyone, almost, so  
8        we would like to start with 1, 3, 5, 7, and  
9        9 at the odd microphone, and on the right  
10       microphone, if we could start with 2, 4, 6,  
11       8, and 10. So could we move into that now,  
12       please.

13               MR. PAULSON: Rafael, ensure that  
14       people know about the other room.

15               MR. GONZALEZ: Yes.

16               For those of you who have sort of a  
17       shorter time frame, please remember that we  
18       do have a court reporter in the Palermo  
19       room, which is two rights -- walk out here,  
20       make a right, walk down to the first  
21       hallway, and make a right, and it's the  
22       second room on your left. There's a court  
23       reporter there who will take your comment  
24       also in private. There's also a staff

1 person there who will take your card.

2 So with that, sir, I think you're up  
3 first.

4 MR. FREMONT: My name is Mike  
5 Fremont, F-r-e-m-o-n-t. I am president of  
6 Rivers Unlimited, an Ohio group, the oldest  
7 statewide river protection and restoration  
8 group in the nation. We are one of the  
9 petitioners.

10 We call upon your sense of justice,  
11 your compassion; truly, your patriotism, in  
12 addressing our petition. We protest U.S.  
13 EPA's handling of our petition.

14 One, when you reviewed OEPA's files,  
15 you failed to interview the injured public,  
16 although they wanted to show you what is  
17 really hurting them.

18 Two, you call a meeting on a  
19 weekday, half during the day, making it  
20 impossible for working people to attend.

21 Three, you hold it at a remote place  
22 where there's no reasonable public transit,  
23 if any at all.

24 Four, you limit us to three minutes,

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1 far too little to bring out the shocking  
2 examples of Ohio EPA enforcement failures  
3 and corporate protective policies.

4 Five, you limit total testimony to  
5 five hours. This petition has been before  
6 you for four years. Many here and many,  
7 many more who couldn't get here have  
8 suffered with polluted air, water, and land  
9 for ten years and more.

10 We are aware, even if you choose not  
11 to recognize it, this pollution has snuffed  
12 out many lives, sickened countless people,  
13 damaged their children, worsened their  
14 quality of life, and reduced the value of  
15 their homes. Many can't afford to move.

16 You must see by now that we can't  
17 entrust enforcement to Ohio EPA. Our only  
18 possible resort thus far has been to go to  
19 court, far beyond the means of almost  
20 everyone. We have put thousands of hours  
21 into building this case for you with some of  
22 the best public-spirited researchers,  
23 scientific and professional citizens in  
24 Ohio.

1           We beg you to take over permitting  
2    in Ohio and remove it from the control of  
3    scofflaw corporate polluters, power plants,  
4    steel, chemical, paper, mines, and so on.

5           Ohio EPA, under present and past  
6    policies, does not represent the public  
7    interest. The health of thousands of  
8    Ohioans is in your hands.

9           (Applause)

10          MR. GONZALEZ: Thank you, sir.  
11    Thank you very much.

12          No. 2? No. 3?

13          MS. SWEARINGEN: Can I stand at the  
14    podium?

15          MR. GONZALEZ: Sure.

16          MS. SWEARINGEN: I just like to see  
17    the people when I'm talking.

18          My name is Terri Swearingen. I live  
19    with my family in the Ohio River Valley,  
20    where one of the world's largest commercial  
21    toxic waste incinerators is operating in  
22    East Liverpool, Ohio.

23          WTI is located in the floodplain  
24    immediately on the bank of the Ohio River in

1     an impoverished minority Appalachian river  
2     town. It's operating in a residential  
3     neighborhood where the closest home is only  
4     320 feet away. WTI's smokestack is level  
5     with the front doors and windows of a 400  
6     student elementary school 400 yards away.

7             WTI should be an embarrassment to  
8     the EPA. It's a classic example of why  
9     citizens do not trust the EPA, why they do  
10    not believe that the agency's primary  
11    concern is protection of human health, and  
12    why the Ohio EPA's authority should be  
13    withdrawn.

14            I may go over three minutes. I  
15    drove four hours to get here, and I've got  
16    to return tonight, so I hope you'll bear  
17    with me as I make my comments.

18            By allowing the construction of WTI  
19    in that location, the Ohio EPA violated its  
20    own siting law. The Ohio siting criteria,  
21    which prohibits the construction of  
22    incinerators within 2,000 feet of any home,  
23    school, hospital, or prison, or within the  
24    floodplain, was implemented in August of



1 1984, a full seven years before WTI  
2 construction began.

3 I'd like to mention a few things  
4 here about the WTI risk assessment as well  
5 as Ohio's siting criteria. I didn't know  
6 about the law that Julie Weatherington-Rice  
7 mentioned. I find that really shocking --  
8 actually not for the Ohio EPA.

9 But the U.S. EPA does mention the  
10 WTI risk assessment on Page 11 of the RCRA  
11 report, and they say that there was  
12 extensive review because of the stakeholder  
13 recommended technical expert peer review of  
14 the risk assessment. It was totally  
15 inadequate, and I just want to mention a few  
16 things about that.

17 In light of the events of 9-11, the  
18 need to consider accident scenarios and  
19 Ohio's siting law requiring a buffer zone  
20 are more relevant than ever. The Ohio EPA  
21 can no longer say that the worst case  
22 accident scenario won't happen. Experts and  
23 the chemical industry itself have now  
24 acknowledged that facilities like WTI pose a

1 very real threat for terrorist activity. In  
2 yesterday's Washington Post, Fred Webber,  
3 the president of the American Chemistry  
4 Council, was quoted as saying, "No one needs  
5 to be convinced that we could be and indeed  
6 would be a target for future -- a target at  
7 some future date. If they are looking for  
8 the big bang, obviously you don't have to go  
9 far in your imagination to think about what  
10 the possibilities are."

11 According to WTI itself, a worst  
12 case accident releasing 100,000 pounds of  
13 toxic chemicals could threaten the  
14 population within 3.9 miles of the facility.  
15 In a recent chemical accident report by  
16 PIRG, WTI is listed as No. 5 out of the top  
17 25 facilities in Ohio storing the largest  
18 amount of extremely hazardous substances.  
19 The report noted that WTI stored 8,700,000  
20 pounds of chloroform on-site.

21 WTI's RCRA permit expired in January  
22 1995, a full seven years ago. It's now been  
23 eight years since WTI filed their permit  
24 renewal application with the Ohio EPA in

1 1994. EPA's current unwillingness to renew  
2 WTI's RCRA permit after eight years would  
3 seem to indicate EPA's own concerns about  
4 the trouble that -- this facility's long  
5 record of violations and untruthfulness.  
6 The Ohio EPA's negligence in addressing the  
7 WTI permit renewal has obstructed due  
8 process for citizen intervention.

9           When the Ohio EPA finally gets  
10 around to addressing WTI's expired RCRA  
11 permit, the agency must consider the siting  
12 criteria as well as conducting a new  
13 accident analysis in the risk assessment,  
14 which already identified at least 27  
15 possible accident scenarios that could harm  
16 or kill the children in that school 1,100  
17 feet away.

18           MR. GONZALEZ: Wrap up.

19           MS. SWEARINGEN: WTI began  
20 commercial operation in 1993, even though  
21 they failed three areas of their test burn.  
22 Nonetheless, the Ohio EPA allowed them to  
23 continue to operate. On October 26 of '94,  
24 WTI was fined \$126,000 for air monitoring

1 violations, excess emissions, and improper  
2 handling and storage of hazardous waste.

3 In an August 13, '96 letter to WTI  
4 from Ohio EPA regarding the number of fires  
5 that had occurred, the EPA said, you know,  
6 you have too many fires, you need to begin  
7 preventing those fires. Since that time,  
8 WTI's had 33 additional fires.

9 MR. GONZALEZ: I'm sorry, we've  
10 given you five minutes, and could you turn  
11 the rest of it in, and we can --

12 MS. SWEARINGEN: I'll try to wrap  
13 this up really quickly. I just think there  
14 are so many important things to say about  
15 this, and it is just such a typical example,  
16 and I did drive four hours.

17 MR. GONZALEZ: I appreciate that,  
18 but you could also have an opportunity to  
19 come back once we get past the initial --

20 MS. SWEARINGEN: I have four hours  
21 to drive home. I'm leaving.

22 MR. GONZALEZ: I --

23 MS. SWEARINGEN: Do you mind?

24 (Members of the audience say no.)

1 MS. SWEARINGEN: Can I have a few  
2 more minutes of your time? Is that okay?

3 (Members of the audience say yes.)

4 MS. SWEARINGEN: Thanks. Thank you  
5 very much.

6 In a November 19, 1995 (sic) letter  
7 to WTI, the new Ohio EPA director, Chris  
8 Jones, wrote, "The hazardous waste  
9 violations that have occurred at Von Roll  
10 America, permitted facility located in East  
11 Liverpool, Ohio, concern me. These  
12 violations include improper hazardous waste  
13 container management, receipt and treatment  
14 of hazardous waste not authorized under  
15 their permit, storage of incompatible  
16 wastes. Many violations are repeat  
17 violations. Numerous and serious violations  
18 of the State's hazardous waste laws and  
19 terms and conditions of the permit have been  
20 discovered at Von Roll's facility during  
21 each inspection conducted since 1996."

22 Because of the serious nature and  
23 the number of the violations, U.S. EPA said  
24 they were a significant noncomplier. But

1     these violations weren't addressed, and  
2     enforcement action wasn't taken until last  
3     year. What is clear is that previous  
4     enforcement agencies were inadequate to  
5     ensure the facility's compliance and the  
6     health and safety of this community.

7             The EPA has stated that WTI is the  
8     most heavily scrutinized and tightly  
9     regulated facility in the entire country.  
10    If that's the case, then the U.S. EPA has no  
11    choice but to withdraw the State's  
12    authority, based on the WTI case alone. If  
13    WTI is the best that the Ohio EPA can do,  
14    then God help the rest of the victims in the  
15    other communities where EPA is managing the  
16    site.

17            (Applause)

18            MR. GONZALEZ: Are you finished?

19            MS. SWEARINGEN: I'm going to finish  
20    here.

21            The North Ohio Valley Air Authority  
22    disbanded in September of 1997. It's been  
23    the official agency in charge of air quality  
24    monitoring and enforcement in six eastern

1 Ohio counties since 1967. It's been under  
2 contract with the Ohio EPA since its  
3 inception in 1972. Problems at NOVAA  
4 surfaced publicly in the press in '97, when  
5 the Akron Beacon Journal investigative  
6 series exposed air officials who were  
7 receiving payments from WTI and revealed  
8 ongoing violations and scandals regarding  
9 air monitoring equipment at the facility.  
10 According to the paper, Von Roll made  
11 payments on the side to employees of NOVAA,  
12 and that's the agency that's monitoring  
13 them.

14 EPA's risk assessment was in part  
15 based on data collected by NOVAA and during  
16 the trial burns, and some of the pollution  
17 violations date back to that time. Last  
18 October an investigation by the EPA's  
19 national ombudsman revealed air testing and  
20 monitoring at the facility were suspect from  
21 the start and that Ohio EPA had known since  
22 at least '96 that tests conducted at WTI  
23 were rigged to show favorable results. For  
24 example, when the facility conducted

1 compliance testing for lead emissions, the  
2 company fed no lead-bearing waste into the  
3 incinerator.

4 NOVAA had been under contract with  
5 the Ohio EPA for 25 years. They acted as an  
6 arm of the agency, but the Ohio EPA still  
7 should have been in charge. They held  
8 ultimate responsibility. Do they claim  
9 ignorance or malfeasance? Is it possible  
10 that for over three years the Ohio EPA  
11 didn't know what was happening between WTI  
12 and NOVAA? Is this what Ohio EPA meant by  
13 "most closely monitored facility"?

14 On March 12 of '95, environmental  
15 engineer and former Ohio EPA employee Teresa  
16 Spezio stated in a letter to the Hazardous  
17 Waste Facility Board, "I was involved with  
18 permit review of the WTI facility during my  
19 tenure in the Division of Solid and  
20 Hazardous Waste Management. When I first  
21 began to review WTI's Part B application, my  
22 superior," who she declined to name, "stated  
23 that I should not bother to review the  
24 Part B application for WTI since the permit



1 would be approved and issued regardless of  
2 any input from the Ohio EPA permit review.  
3 In Pennsylvania, a proposed hazardous waste  
4 incinerator was scrubbed because of the  
5 nearby presence of a federal prison. Is it  
6 not strange that in Ohio WTI was not stopped  
7 by the presence of a nearby school? The  
8 question becomes even more troubling when  
9 one considers that in 1988 I was told by my  
10 superior that the facility was going to be  
11 constructed, regardless of the design,  
12 operation, or location of WTI."

13           There is too much at stake in  
14 communities all over the state to allow  
15 business as usual at the Ohio EPA. We  
16 implore you to take action now to restore  
17 programs that really protect public health.  
18 And I thank you for your patience.

19           (Applause)

20           MR. GONZALEZ: Thank you. And have  
21 a safe trip home, please. Thank you.

22           There are always exceptions, so that  
23 was one. Incidentally, she was given  
24 someone else's three minutes also, so she

1 really didn't take up that much of our time.

2 I think it was all very worthwhile, and I

3 know you wanted to get it out.

4 So thank her again and a safe trip

5 to her on the way home.

6 Ma'am, you're on.

7 MS. O'DONNELL: I'm here to read a

8 statement from Mark Seelig, S-e-e-l-i-g,

9 first name, M-a-r-k, from Urbana, Ohio.

10 THE NOTARY: May I have your name,

11 please.

12 MS. O'DONNELL: Jennifer O'Donnell.

13 Who is protecting the people? Most

14 citizens take for granted that public

15 drinking water is safe to consume. We also

16 expect our state and local governments to

17 exercise adequate oversight of industries

18 that utilize and dispose of hazardous or

19 toxic compounds. In Ohio and particularly

20 in Urbana, that record of oversight is one

21 of utter failure. As a result, both public

22 and private sources of drinking water have

23 suffered VOC and nitrate contamination.

24 Many of Urbana's industries have

1     fouled one of the world's most prolific  
2     sources of drinking water, the Mad River  
3     aquifer. In 1995, Urbana's groundwater was  
4     discovered to contain VOCs as high as 4,000  
5     parts per billion, but loopholes in the law  
6     have allowed the corporate polluter to  
7     escape responsibility for cleanup. Many of  
8     Urbana's public wells either have been  
9     closed due to high nitrate levels or  
10    threatened with closure in the near future  
11    as the result of approaching plumes of VOCs.  
12    The same plumes have contaminated county  
13    wells with levels of VOCs 12 to 14 times the  
14    MCL.

15           No one knows how long these county  
16    residents have been consuming dangerously  
17    contaminated water. Nor does anyone in  
18    authority seem to care. Despite sporadic  
19    testing over a ten-year period by the OEPA,  
20    no one yet has identified the sources of  
21    Urbana's groundwater contamination nor the  
22    full extent of the plumes. It would appear  
23    that the pollution is moving faster than the  
24    Ohio EPA and our local government.

1           Unfortunately, the Ohio EPA even  
2       supports programs that are at odds with the  
3       goal of holding corporate polluters  
4       responsible for damaging the environment and  
5       public health. One of these programs, VAP,  
6       is another major factor contributing to  
7       Urbana's lack of progress. In most cases  
8       VAP has successfully exempted industry from  
9       responsibilities that individuals and most  
10      municipalities must regularly uphold. As  
11      long as the industry can pollute with little  
12      risk of being held accountable, water  
13      quality degradation at the hands of industry  
14      will continue.

15           Urbana needs the additional muscle  
16      of the federal EPA to make any real progress  
17      toward cleanup and prosecution of culpable  
18      industries. In fact, nothing less than the  
19      combined serious efforts of the federal and  
20      state EPA will be likely to withstand the  
21      legal defenses of the numerous large  
22      national corporations implicated in the  
23      contamination of Urbana's well field and  
24      aquifer. The resources of individuals and

1     small municipalities are insufficient to  
2     wage an effective legal battle against large  
3     corporate polluters in Urbana and elsewhere  
4     throughout our state.

5             Ohio is ranked within the top seven  
6     states for the greatest amount of toxic  
7     pollution and among the top ten states in  
8     two categories: For major facilities  
9     violating permits and for highest percentage  
10    of major facilities in significant  
11    noncompliance with clean water permits.  
12    Despite existing laws and efforts by the  
13    OEPA to curtail illegal dumping, industrial  
14    contamination is still occurring with brazen  
15    regularity.

16            We are, in effect, burdened with a  
17    government of the corporation, by the  
18    corporation, and for the corporation. Why  
19    are we wasting public money and destroying  
20    public confidence by funding impotent  
21    regulatory agencies? As a citizen in Urbana  
22    and a Republican, I urge our legislators to  
23    please provide both the state and federal  
24    EPA with the regulatory code and muscle

1       necessary to protect Ohio citizens and  
2       future generations.

3               To the federal EPA, I request your  
4       dedicated involvement in defense of the  
5       citizens of Urbana and its polluted aquifer.

6               MR. GONZALEZ: Thank you very much.

7               (Applause)

8               MR. GONZALEZ: Bob, that was No. 4,  
9       right?

10              MR. PAULSON: That was No. 4.

11              MR. GONZALEZ: So then we have No. 5  
12       over here.

13              Can we have like 5, 6, 7, 8, like  
14       that? Please come down because there's  
15       plenty of seating.

16              MR. HYLAND: My name is Bob Hyland,  
17       H-y-l-a-n-d.

18              My first comment is that it seems  
19       that we could access these transcripts by  
20       sliding a floppy disk into that computer and  
21       putting it on a disk.

22              My second comment is on behalf of  
23       Ned Ford, energy chair of the Ohio chapter  
24       of the Sierra Club.

1           U.S. EPA should be aware that Ohio  
2       EPA failed to submit a proposed state  
3       implementation for NOx emissions from power  
4       plants by the October 2000 revised due date  
5       and in February of 2001 submitted a draft  
6       plan that was rejected. The revised plan is  
7       not expected until early next year, as we  
8       understand it.

9           During the last decade, Ohio EPA and  
10      the State of Ohio have been increasingly  
11      hostile to adequate protection of the public  
12      from the known and well-defined risks of  
13      ozone and fine particulates.

14           Robert Hodanbosi, H-o-d-a-n-b-o-s-i,  
15      Ohio EPA Division of Air chief, has on  
16      various occasions publicly claimed that  
17      Ohio's ozone levels were causing no harm, in  
18      direct contradiction to many medical studies  
19      that include Ohio cities, the state, or the  
20      region. I have personally met with  
21      Mr. Hodanbosi several times and have handed  
22      him summaries of medical studies in order to  
23      help him understand that human lives are  
24      being lost and that this pollution degrades

1 the quality of life for the 800,000 Ohio  
2 citizens with diagnosed respiratory disease  
3 and their families, since half of them are  
4 children.

5 In January of 2000, I attended a  
6 public meeting where Ohio EPA was presumably  
7 going to present their plan for  
8 implementation of the NOx SIP call. In  
9 fact, the meeting was a showcase of their  
10 arguments against controlling NOx. During  
11 the meeting, Mr. Hodanbosi took pains to  
12 explain how he had taken the cost of the NOx  
13 rules, as defined by the Ohio utilities, and  
14 gotten the Public Utilities Commission of  
15 Ohio to convert that to a fraction of  
16 electric rates. He stated that the NOx  
17 rules would require a 7 percent rate  
18 increase. I was familiar with this  
19 7 percent claim but had not previously been  
20 able to associate it with Ohio EPA or the  
21 Voinovich Administration in a specific event  
22 or publication.

23 U.S. EPA should be aware that their  
24 estimate of the cost of the NOx SIP call is



1 a 1 percent rate increase. What  
2 Mr. Hodanbosi had done was asked the PUCO to  
3 convert the capital cost of the NOx rule  
4 into an annual cost. Ohio utilities have  
5 publicly acknowledged that the cost of this  
6 rule would be no more than 2 percent of  
7 rates, and as Ohio citizens know full well  
8 from the acid rain fight, U.S. EPA has a  
9 better track record of predicting costs than  
10 Ohio utilities do, even though both were  
11 very high on the Title IV rules.

12 Almost finished.

13 Since that meeting I have written  
14 Ohio EPA director Christopher Jones and  
15 Governor Robert Taft several times, asking  
16 them for a clear statement of their current  
17 assumptions about the cost of the NOx SIP  
18 call and their assumptions about the human  
19 health impacts of ozone. A staff person  
20 denied that the events of the January 2000  
21 meeting occurred in one letter, but I have  
22 had no response to the simple request for  
23 the agency's present assumptions.

24 Given that Indiana and Illinois now

1     have fully approved SIPs and that some Ohio  
2     utilities have publicly claimed to be  
3     proceeding with NOx controls in the absence  
4     of a state plan, it appears that Ohio EPA's  
5     unresponsiveness is exceptional.

6             In spite of the Ohio EPA's obvious  
7     antipathy for representatives of  
8     environmental organizations, I have  
9     attempted to maintain my end of a polite and  
10    reasonable dialogue. Given that human lives  
11    are endangered by this pollution, U.S. EPA  
12    should consider this to be an exceptionally  
13    troubling indication of the level of ability  
14    or intent at the Ohio EPA. Ned Ford. Thank  
15    you for your patience.

16            MR. GONZALEZ: Thank you very much.  
17    Thank you very much. And I'd just like to  
18    just remind you again that we do have  
19    another court reporter in the Palermo room.  
20    And also, please, if you have written  
21    statements, please bring them forward to the  
22    box that we have for those written  
23    statements.

24            And with that, we go on to our next

1 comment.

2 MS. GRIFFITH: My name is Jodi  
3 Griffith, G-r-i-f-f-i-t-h.

4 I worked for hours trying to  
5 condense all the Ohio EPA wrongdoing at  
6 River Valley to three minutes. It could not  
7 be done. It isn't really necessary. The  
8 U.S. EPA, as well as every other political  
9 entity involved, is well aware of the fiasco  
10 perpetrated on the Marion community at the  
11 hands of the OEPA. Parents, myself  
12 included, were assured that their children  
13 were safe before testing had even begun,  
14 with continued assurances as acres of toxic  
15 waste were discovered on the school grounds.

16 The OEPA's policy of claiming that  
17 it's safe at RV while exposing children to  
18 risk, then testing and discovering the risk,  
19 and then restricting access, is  
20 unacceptable. Inadequate testing was done  
21 to assure the safety of the students, yet  
22 the OEPA misled the public into believing  
23 they were following Governor Voinovich's  
24 mandate to leave no stone unturned at RV.

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1           The OEPA failed to share pertinent  
2     data in their own files with the public and  
3     even with other agencies. The OEPA made  
4     dishonest and misleading statements to the  
5     press, the public, and politicians to cover  
6     up the wrongdoing. The OEPA persecuted and  
7     removed Paul Jayko, who wanted to do the  
8     right thing to assure the students' safety  
9     but was effectively muzzled. As a result,  
10    children continue to attend school on a  
11    military toxic waste dump with a legacy of  
12    elevated rates of cancer and leukemia among  
13    the graduates.

14           Judge Thomas Phalen wrote over 100  
15    pages, outlining in meticulous detail many  
16    of the OEPA's fatal flaws in its  
17    investigation, fatal to both the OEPA's  
18    credibility and fatal for the future  
19    well-being of the River Valley students.  
20    Yet those responsible for the wrongdoing  
21    still hold their positions.

22           Donald Schregardus, former OEPA  
23    director, tried to deny any direct  
24    involvement with decisions made at RV in a

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1     desperate attempt to distance himself from  
2     the wrongdoing and attain a U.S. EPA  
3     appointment. This abdication of  
4     responsibility speaks for itself.

5             RV alumni continue to be diagnosed  
6     and many have died of cancer at alarming  
7     rates. Yet children will remain on-site for  
8     years until new schools are built. Once the  
9     children are gone, it will require millions  
10    of dollars to remediate the school grounds  
11    before they are even suitable for industrial  
12    use.

13            U.S. EPA's failure to acknowledge  
14    and correct this type of wrongdoing would be  
15    the same as issuing your seal of approval  
16    and allowing it to happen again.

17            None of this information is new to  
18    you. Citizens have both begged and demanded  
19    help via letters, phone calls, and meetings.  
20    Stop the chain of political abdication of  
21    responsibility. How many victims will it  
22    take before Ohio EPA is made to do their  
23    job? Would it make a difference if it was  
24    your child that was being victimized? Thank

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1     you.

2                 MR. GONZALEZ:  Thank you very much.

3                 (Applause)

4                 MR. GONZALEZ:  Our next comment will  
5     be -- is that No. 7?

6                 MAN IN AUDIENCE:  7.

7                 MR. GONZALEZ:  8, 9, 10, 11.

8                 MR. GRIFFITH:  My name is Mike  
9     Griffith, G-r-i-f-f-i-t-h.  I'm also with  
10    Concerned River Valley Families.  That was  
11    my wife Jodi.  We're both graduates of River  
12    Valley.  My son Daniel attended River Valley  
13    until we were forced to remove him because  
14    of our concerns.

15                What happened at River Valley is a  
16    parent's worst nightmare.  Parents should  
17    not have to choose between their children's  
18    education versus their safety.

19                As we speak, River Valley graduates  
20    continue to be diagnosed with cancer.  Other  
21    communities like Elmira, New York now look  
22    at RV as a case study on how not to run an  
23    environmental investigation.  River Valley  
24    has been forced to endure a four-year

1 investigation with the knowledge that over  
2 half the school yard is contaminated with  
3 toxic waste.

4 The property immediately across the  
5 fence from River Valley, that once housed  
6 the Army Reserves, has been characterized as  
7 an imminent threat to human health, one of  
8 the criteria that Bertram Frey just  
9 suggested would be removing -- you know,  
10 we'd need to remove the kids.

11 Also, Bill Muno suggested that that  
12 should have been included in the River  
13 Valley investigation. He agreed with us  
14 that the investigation was being compromised  
15 because that was not part of the River  
16 Valley investigation.

17 This property, the Reserve property,  
18 they did not -- they immediately closed that  
19 property to the Reservists because they did  
20 not think it was appropriate to allow the  
21 soldiers to remain on-site once the  
22 preliminary findings came in. But River  
23 Valley has continued to operate throughout.  
24 Children remained on-site as ball fields

1     were being roped off, grass was not being  
2     mowed, arsenic removal actions were taking  
3     place, keep out signs were being erected,  
4     and whistle-blowers and experts were voicing  
5     their concerns, all because of the potential  
6     health threats from the contamination.

7             Areas of the school yard that are  
8     now restricted by a chain-link fence were  
9     once called safe and were being used until  
10    the day the test results came in. Children  
11    literally played on a ball field one day and  
12    were denied access the next.

13            To ease the shock of the test  
14    results, we were immediately assured  
15    although the contamination was there, there  
16    were no pathways of exposure to the  
17    children. Many months later, reports  
18    submitted that the pathways had been there  
19    all along. Sadly, so were the children.

20            Adding insult to injury, we now know  
21    that the Ohio EPA has been aware of the  
22    significant problems that have existed  
23    adjacent to the school grounds for the last  
24    22 years. Documents acquired from the EPA's



1     own files show that they have known about  
2     the East Depot dump site since 1978. The  
3     files show that industries continued to use  
4     the Army Reserve portion of the dump even  
5     after the schools had been built.

6             What is worse, when health problems  
7     at River Valley started showing up in 1997,  
8     they kept their fail passed at the site a  
9     secret from the public and apparently from  
10    the Army, also, because it did not end up in  
11    the Army archive search report.

12            None of this information is new to  
13    you. We have written countless letters,  
14    made countless phone calls, pleaded and  
15    begged for those in position of  
16    responsibility to take heed to what was  
17    happening at the hands of the Ohio EPA in  
18    Marion. We sent the U.S. EPA and others  
19    Judge Phalen's decision, which clearly  
20    spells out many of the problems we as  
21    citizens were trying to get addressed for  
22    years.

23            The River Valley investigation  
24    became a political train hurtling out of

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1 control and the River Valley students were  
2 its passengers. Taking no action against  
3 such wrongdoing is condoning the wrongdoing  
4 and giving permission for it to happen  
5 again.

6 I am tired of watching my fellow RV  
7 alumni get cancer and die. You are either  
8 part of the solution, or you're part of the  
9 problem. Help us demand accountability and  
10 responsibility from the Ohio EPA. Thank  
11 you.

12 (Applause)

13 MR. GONZALEZ: Thank you.

14 I guess you have No. 8. You're  
15 No. 9, 10, and 11.

16 Yes, sir.

17 MR. LITTERAL: Yeah, my name's  
18 Timothy Litteral, L-i-t-t-e-r-a-l.

19 I'm here on behalf of Henry Greer.  
20 Henry Greer attended River Valley. Henry  
21 Greer is now dead. Henry Greer died at the  
22 age of 42 of a cancer that is so rare that  
23 if it occurred in someone at the age of 70,  
24 the doctor would be shocked. I sat and

1     watched that man go from a cherubic 189  
2     pounds to a skeletal, yellow bag, okay, that  
3     just barely covered his bones.

4             What I wanted to do today was to  
5     impress upon you that, yes, these are  
6     issues, but these are lives that we're  
7     talking about today. And Henry Greer was  
8     one of those lives at River Valley. We have  
9     to set precedents and priorities, I  
10    understand that. But there are some small  
11    things that, if we leave undone, can say  
12    such great things about us. If we leave our  
13    children to die in another 20 years because  
14    there's no imminent threat, it takes 20  
15    years for the threat to become a reality  
16    like it came to Henry Greer.

17            And to myself, to have to watch  
18    that, if we can't stop what's going on  
19    there, what does that say about us? What  
20    does that say about us as a nation, as a  
21    community, and as human beings? Thank you.

22            (Applause)

23            MR. GONZALEZ: Thank you, sir.

24            Who is up next over here? No. 9.

1       No. 8 -- no, I'm sorry, No. 10.

2               MS. WHETSTONE: My name is Brandi  
3       Whetstone. I'm actually reading a statement  
4       for a gentleman named Clark Thompson. It's  
5       T-h-o-m-p-s-o-n. He is a resident of the  
6       Oneida neighborhood next to the AK Steel  
7       plant in Middletown, Ohio.

8               On a side note, this was addressed  
9       to the Hamilton County Department of  
10      Environmental Services, which is a contract  
11      agency of the OEPA. In southern Ohio they  
12      don't deal directly with the Ohio EPA.

13              And here's his statement.

14              To testify would be a huge  
15      inconvenience. This should be addressed by  
16      obtaining signed statements from residents.  
17      We all have enough distractions without  
18      having to listen to idle banter from persons  
19      who have a different agenda. Incidentally,  
20      you have revealed to us that you have  
21      monitors to determine violations at Verity  
22      School, which is northeast of AK Steel, and  
23      Oneida School, which is west of AK Steel.

24              Your recent findings have been

1 fairly minimal. That's because these areas  
2 are historically low fallout areas. The  
3 prevailing winds travel in a southwesterly  
4 direction across AK. Typically, the most  
5 severe pollution occurs within a four-block  
6 area extending from AK's truck entrance off  
7 Oxford State Road to the west. I continue  
8 to see responses that tell us how minimal  
9 the fallout is and how AK officials confirm  
10 the systems are A-OK.

11 I strongly suggest a monitor system  
12 where the action is, where you can count on  
13 fallout, kish, iron oxide, et cetera. Let's  
14 perform an honest test when people in the  
15 immediate area are being bombarded. Set up  
16 a station on a power pole, preferably Seneca  
17 Street. Without question, you will soon  
18 find absolutely conclusive proof of  
19 excessive fallout in this area. This would  
20 be far more effective than having the locals  
21 voice their sincere but easily challenged  
22 complaints.

23 And on a side note, I have also  
24 offered the use of my home property as a

1 monitoring site in the event that state or  
2 local restrictions prevent installation of  
3 their equipment on city property. I also  
4 stated I would allow their equipment to use  
5 my electricity free of charge. Thank you.

6 MR. GONZALEZ: Thank you very much.

7 (Applause)

8 MR. GONZALEZ: No. 11.

9 MS. ARNETT: My name is Karen  
10 Arnett, A-r-n-e-t-t. I reside in  
11 Cincinnati, Hamilton County, approximately  
12 1/2 block from an aluminum casting facility  
13 called Willard Industries.

14 In Hamilton County we do not deal  
15 directly with the Ohio EPA. Instead, we  
16 deal with the Ohio EPA's contract agency, as  
17 you heard earlier, Hamilton County  
18 Department of Environmental Services. For  
19 the rest of this, I'll just say DES for  
20 Department of Environmental Services.

21 When I moved into my house about  
22 three and a half years ago, I discovered  
23 that a terrible melted plastic smelling fume  
24 was often present at my home. Six months

1 later, when I learned of the odor complaint  
2 hotline of DES, I began to call in  
3 complaints when appropriate. The existence  
4 of this hotline is not commonly known to  
5 residents of the four-county area it serves.  
6 I have heard indirectly from a former DES  
7 employee that the agency will not advertise  
8 the presence of this hotline, possibly  
9 because the agency does not want local  
10 industry to accuse it of soliciting  
11 complaints from the citizenry.

12 In my case -- and I have since  
13 learned in many cases, citizen complaints  
14 are the only way that the DES and through it  
15 the Ohio EPA learns of an air violation or  
16 of a company operating without a permit.

17 The investigation of my first odor  
18 complaint in August of '98 pinpointed  
19 Willard Industries as the source. I  
20 eventually learned that Willard Industries  
21 had no permit for the many tons of VOCs,  
22 primary among them styrene and benzene, that  
23 it emitted per year.

24 In fact, although Willard had been

1 categorized de minimis for VOCs for a  
2 decade, persistent citizen pressure led DES  
3 finally to determine the company was, in  
4 fact, a major point source, subject to  
5 Title V permitting. The only way this came  
6 to light was through the complaints and  
7 inquiries of myself and other concerned  
8 citizens.

9           The DES representatives with whom I  
10 spoke over the next many months quite  
11 confidently assured me there was no problem,  
12 that the tons of styrene, benzene, xylene,  
13 methyl benzene that were poured out over the  
14 years did not affect my or my neighbors'  
15 health. DES people confidently asserted the  
16 correctness of the regulatory status quo  
17 with respect to Willard Industries until the  
18 status quo was proved wrong. I encountered  
19 an attitude from the head of permitting at  
20 DES that I, in fact, was the problem.

21           Two reasons that any meaningful  
22 change took place with respect to Willard at  
23 the Department of Environmental Services:  
24 One, the threat of a federal citizen suit,



1     and one lone, conscientious employee at the  
2     agency. That employee, who no longer works  
3     for the company, took the initiative to  
4     research the process that the company used,  
5     required the company to use an odor  
6     neutralizer on their fumes, and took actions  
7     which led to requiring stack tests.

8             For over ten years the company had  
9     never provided an iota of information on the  
10    quantity or content of their emissions.  
11    Fumes and odors continue unabated to this  
12    day.

13            I continue to phone in to the  
14    hotline when I smell fumes from the plant.  
15    The way the hotline is designed, my  
16    complaints are only rarely verified.  
17    Investigators are unable to get on scene in  
18    as timely a manner as needed. Usually the  
19    fumes are not present by the time the  
20    investigator arrives. It is often a comedy  
21    routine when the fumes are not present when  
22    the investigator arrives, but within minutes  
23    after the investigator leaves, the fumes  
24    return.

1 Overall studies show a very poor  
2 record for this important hotline.  
3 10 percent or less of complaints are  
4 actually verified.

5 I want to say one more thing, and  
6 that is that in December of last year, the  
7 smokestack at Willard was raised 20 feet in  
8 response to a -- to comply with the consent  
9 decree by the State, and this was to bring  
10 the company into compliance over violation  
11 of a nuisance, Ohio administrative code  
12 nuisance law that they had been violating.  
13 Since then, complaints have continued to  
14 come in, and air samples taken in my  
15 neighborhood have showed higher, not lower,  
16 levels of styrene than before the stack was  
17 raised. Thank you.

18 MR. GONZALEZ: Thank you very much.

19 (Applause)

20 MR. GONZALEZ: No. 12.

21 MS. WEATHERINGTON-RICE: Hi. My  
22 name is Julie Weatherington-Rice,  
23 W-e-a-t-h-e-r-i-n-g-t-o-n, hyphen, R-i-c-e.

24 I'm the senior scientist at a firm

1     called Bennett & Williams here in Columbus,  
2     Ohio.  We do water supply.  And maybe those  
3     of you in water recognize the U.S. EPA  
4     DRASTIC groundwater pollution potential  
5     mapping program.  If you do, you know that  
6     Linda Aller, Truman Bennett, and Glen  
7     Hackett, three of the five authors of that  
8     program for U.S. EPA, which is  
9     internationally used now, are in our firm.

10            I also serve -- I'm a student,  
11     actually a very, very part-time doctoral  
12     student at Ohio State University in soil  
13     science, so that makes me a geologist, a  
14     hydrogeologist, and a soil scientist.

15            I teach part-time with Dr. Ann  
16     Christy in the Food, Agriculture, and  
17     Biological Engineering Department, which is  
18     why I'm dressed like I am because Ann and I  
19     had a lab this morning which we finished and  
20     then madly rushed over here to be in time,  
21     and it was a messy lab so we didn't have  
22     time to clean up.  And Dr. Christy is an  
23     internationally known expert in  
24     bioremediation and biodegradation in

1     landfills.

2             Dr. Christy and I act as the  
3     co-organizers and supporters to the Ohio  
4     Academy of Science Fracture Flow Working  
5     Group. This is a group of 25 federal,  
6     state, and local agencies; university and  
7     college departments; professional  
8     organizations; and private entities that are  
9     involved in research in looking at macropour  
10    and fracture flow in unlithified glacial  
11    materials. We interact with Canada and  
12    Denmark and other European countries on a  
13    regular basis.

14            I will say that virtually everybody  
15    involved in this organization, with the  
16    exception of EPA, is really joyous in this  
17    research. Many of us are fellows of the  
18    Ohio Academy, including Dr. Christy and  
19    myself.

20            For the last 25 years, almost, I  
21    have acted in the capacity with Ohio EPA of  
22    review and advising, this last year on solid  
23    waste, on the VAP program, on biosolids, and  
24    was involved peripherally in the move of the

1 CAFO program.

2           Why am I telling you this? I'm  
3 telling you this because I think I probably  
4 qualify as an expert. And I'm probably one  
5 of the few people who have come up here  
6 today that are qualified as experts. Most  
7 of the people here are citizens.

8           I want you to understand that when  
9 well fields go bad, like they did at Urbana,  
10 when landfills get proposed, our firm gets a  
11 phone call. We get a phone call because  
12 we'll give the review that Ohio Department  
13 of Natural Resources would have given if  
14 they had been allowed to participate, which  
15 they are not.

16           I want you to understand that while  
17 you are looking at this from the outside in,  
18 we're looking at it from the inside out.  
19 And while I hear your concern, I think you  
20 are being naive, and I think you are being  
21 optimistic. You are making the assumption  
22 that the people that you are talking to in  
23 the agency actually can change things,  
24 actually can make a difference. But they

1     don't make the decisions. The decisions  
2     come out of the Governor and out of the  
3     powerful people in the legislature.

4             And if you take the programs away  
5     from them and you take the money away, then  
6     there are that many fewer people to carry  
7     out the programs, and you're in Chicago and  
8     they're here.

9             So please listen to these people  
10    today. We've had the honor of working with  
11    them. They are not painting things any  
12    blacker than they are. Things have been  
13    very grim in Ohio for the last number of  
14    years. Please listen to them.

15            And I'll hang around this evening,  
16    and I'll be glad to talk to you all about  
17    any other questions that you might have on  
18    any of these projects. Thank you.

19            (Applause)

20            MR. GONZALEZ: Thank you very much.

21            No. 13 and 14, 15, and 16. We have  
22    13? We have 14 over here? Do we have 15?

23            MR. ZIELINSKI: 15, lucky number.

24            My name is Mike Zielinski. That's

1       Z-i-e-l-i-n-s-k-i.

2                   And my comment comes from an Ohio  
3       EPA hearing that I attended this past summer  
4       concerning a coke oven operated by AK Steel  
5       at its Middletown steel mill. And AK had  
6       been operating that coke oven with a draft  
7       permit. They had already been found to be  
8       in violation under the terms of their draft  
9       permit, yet the EPA was prepared to grant  
10      them a permanent permit and AK would be  
11      responsible for monitoring its compliance.

12                  So we have a situation here where  
13      the company has already violated the draft  
14      permit, yet the Ohio EPA is willing to give  
15      them -- set up a situation where they would  
16      be reliant on AK Steel for reporting on  
17      itself as to whether or not it had violated  
18      the permit on the air emissions.

19                  And as we've heard a lot of  
20      testimony earlier today and some tonight,  
21      AK Steel is a company that has a long and  
22      dirty history of poisoning the environment.  
23      And I would just like to know how the  
24      federal EPA or the Ohio EPA can go along

1 with a system where a company that's been  
2 consistently violating the law over and over  
3 and over again is allowed to police itself.  
4 There's something wrong with that system,  
5 and I think that needs to be addressed, and  
6 Ohio EPA certainly shouldn't be granting AK  
7 any kind of permits where it's going to be  
8 up to the corporation itself to report on  
9 compliance and violations. Because the  
10 history of AK Steel shows that that's not  
11 going to happen.

12 And then I just want to conclude  
13 with AK Steel has launched a very aggressive  
14 campaign of its own to try and back the Ohio  
15 EPA off of any kind of enforcement. Weak as  
16 that enforcement has been, apparently  
17 AK Steel doesn't want to have any kind of  
18 environmental regulations operating its --  
19 on its business operations.

20 Earlier this month, the CEO of AK  
21 Steel sent a letter to all the employees of  
22 AK in Ohio, asking them to write Governor  
23 Taft and to write to the Ohio EPA and tell  
24 them to back off on any kind of collecting



1     any fines on AK Steel or enforcing the  
2     environmental regulations. And I can  
3     provide you with a copy of this letter, but  
4     it was strongly implied to the employees  
5     that if they wanted to continue to be  
6     employees of AK Steel, they better get  
7     cracking on those letters.

8             And I would just like to ask people  
9     here, we have a -- some information here  
10    with the addresses for Governor Taft and for  
11    the Ohio EPA. And I'd urge everybody here  
12    that's concerned about environmental  
13    standards and the integrity of the system to  
14    write to Governor Taft, to write to the EPA  
15    here in Ohio, and let them know that it's  
16    time to demand some accountability and  
17    enforce the environmental laws against  
18    corporate polluters like AK Steel.

19            (Applause)

20            MR. GONZALEZ: Thank you, sir.

21    Thank you for your comment.

22            Do we have 16? Do we have 17?

23            (Pause in proceedings.)

24            MR. PERKINS: My name is Dan

1 Perkins, Johnstown, Ohio, right near Buckeye  
2 Egg Farm, and since it is an egg story or an  
3 egg situation, I'd like to preface my little  
4 presentation with a little story.

5 A drunk went into a restaurant and  
6 ordered scrambled eggs. The waitress went  
7 out to the kitchen, and the chef told her  
8 that he just had one egg. So she said,  
9 "Well, he's so drunk he'll never know the  
10 difference. Find something else to put with  
11 it."

12 So he said, "Here's some limburger  
13 cheese."

14 She says, "That's all right."

15 So he cooked it up, and she took it  
16 out. He's eating it. He looks up and says,  
17 "Where do you get your eggs?"

18 "Oh," she says, "we have a little  
19 hen house out back."

20 Well, he said, "Do you have your own  
21 rooster?"

22 "Why, no. Why do you ask?"

23 "Well, you better get one because a  
24 skunk's been breeding your chickens."

1 (Laughter)

2 MR. PERKINS: But, anyhow, going  
3 along with what the lady from Urbana said,  
4 we have a situation at Buckeye Egg Farm  
5 where they came in and they put in four  
6 laying installations. I live right next to  
7 Laying Installation No. 2. And I'm very  
8 familiar with that because I used to help  
9 that neighbor farm. They built -- they  
10 put -- there are now 16 buildings over these  
11 places where there were at least three  
12 wells.

13 Another person and myself went  
14 around, and we're familiar, we're very  
15 familiar with that area. We both have lived  
16 there a long time. We counted at least 47  
17 instances where there were wells, and most  
18 of the people around there now are not  
19 familiar with the area, like where Minnie  
20 Green's farm was and where Speedy McInturf's  
21 was, and this, that, and the other. And we  
22 counted all those wells, and there were 47  
23 wells.

24 Laying Site No. 2, Laying Site No. 4

1 are built right on top of wells. We have  
2 people now, young people, coming out there,  
3 and they are having to buy bottled water.  
4 Now, why should they have to buy bottled  
5 water? In my lifetime I've gone up to  
6 old-fashioned pumps with an old, rusty cup,  
7 and drank out of that, and here I am soon to  
8 be 75 years old, as mean as I was when I was  
9 18.

10 But now, how can we drink water in  
11 situations like that? There's a situation  
12 down in North Carolina right now where  
13 there's a hog farm and the water has been  
14 polluted. They got to the aquifer. So it's  
15 a situation that the EPA should look at and  
16 address. Thank you for your attention.

17 (Applause)

18 MR. GONZALEZ: Thank you very much,  
19 sir. That was most enjoyable. Thank you.

20 Do we have a No. 18? No? No  
21 No. 18? How about a No. 19? How about a  
22 No. 20? 21? 22? 23? 24?

23 Okay. Who has a number? Step right  
24 up, please.

1 MR. PAULSON: 27.

2 MR. GONZALEZ: 27, okay.

3 MS. TRENT: My name is Mary

4 Grimmett, Trent, and I live at 1854 Sedro  
5 Street, Cuyahoga Falls, Ohio.

6 And I have interacted with both the  
7 U.S. EPA and Ohio EPA for the past eight  
8 years. I have interacted on the following  
9 sites: Goodyear Wingfoot Lake; Sam Winer  
10 Motors Company; Cascade Locks District, 22  
11 sites within the city of Akron; Hardy Road  
12 Landfill; and most recent, Fountain Street  
13 transfer station.

14 In the course of the past eight  
15 years, I have experienced difficulty  
16 receiving proper funding and testing from  
17 Ohio EPA. While researching the previous  
18 named sites, I became aware of extensive  
19 budget cuts and personnel being transferred  
20 out of the Twinsburg office.

21 It became clear to me that Governor  
22 Taft is allocating money that is supposed to  
23 be used by Ohio EPA to other areas of the  
24 state. I am personally asking U.S. EPA to

1     please ask for an audit or an investigation  
2     to where the funds are being distributed.

3             Families statewide are being  
4     impacted by environmental issues. Funding  
5     is unavailable to the same families that pay  
6     taxes to the State of Ohio.

7             I personally spent eight years of my  
8     life begging Ohio EPA to test a property  
9     called Sam Winer Motors, and I never could  
10    get it because funds were not available.  
11    Eight years later astronomical levels of  
12    solvents were found in the groundwater and  
13    the soil, eight years later. This area  
14    recharges the aquifer, and my children  
15    consumed the water. My children were very  
16    ill for eight years.

17            Ohio EPA asked U.S. EPA to assist  
18    because of funding problems. If funds had  
19    been available by the State of Ohio,  
20    exposure could have been at a minimum for  
21    the surrounding community. TOSC, funded by  
22    a grant -- that is your Technical Outreach  
23    Services for Communities at Michigan State  
24    University. They are experiencing problems

1 receiving key files for research of the Sam  
2 Winer Motors site from Ohio EPA. Freedom of  
3 Information Act requests cannot be complied  
4 with, so the TOSC program, which is your  
5 program, may not be able to fully address  
6 the concerns of citizens at the Sam Winer  
7 Motors site.

8 Not only did eight years of  
9 potential needless exposure happen because  
10 there were no funds, the cleanup decision  
11 that you guys sponsor at TOSC and concerned  
12 citizens cannot be fully addressed.

13 Believe it or not, over the past  
14 eight years I have grown to respect Ohio  
15 EPA. I've become friends with the guys  
16 there. They have mentored me. And I am  
17 going to school, and hopefully some day I  
18 will be in an environmental field.

19 Working with them, it became  
20 apparent that they cannot properly help  
21 impacted families because there is very  
22 little funds given to Ohio EPA by the State.  
23 This problem has to be overcome. Families  
24 are stressed and blame the agency. In turn,

1 the agency has no other alternative except  
2 to wait years before interacting at sites  
3 statewide.

4 Governor Taft has to act now. He  
5 can't wait. U.S. EPA must request an audit  
6 or an investigation to help resolve an  
7 ongoing problem. It is my belief that the  
8 State of Ohio must implement a Superfund  
9 equivalent law. Proper funding would help  
10 build a bridge between the State and the  
11 citizens of the state of Ohio. The  
12 environmental issues that everyone here is  
13 talking about and the cancers are real.

14 Lives are being impacted negatively  
15 by the State. Better organization of funds  
16 and proper legislation would delay all the  
17 mistrust the citizens have of Ohio EPA.

18 And I just want to add before I sit  
19 down, I have been to Region 5, and I have  
20 done file reviews. I did fully request  
21 because I could not get what I needed at  
22 Ohio EPA. I know Bill. I know Rick Carl,  
23 Jeannie Griffith, Laura Ripley, most of the  
24 guys you guys work with. I may have met you



1       guys, but I don't remember you.

2               But I have been through the worst  
3       eight years of my life, and I will not sit  
4       back and watch another family go through  
5       what we went through.

6               So, please, evaluate to the best of  
7       your ability. The Governor needs to put the  
8       funds where they need to go. I am a  
9       fighter. I will not quit. I drove all the  
10      way here from Akron, Ohio, and I'll be back.  
11      Thank you.

12              (Applause)

13              MR. GONZALEZ: Thank you very much.  
14      Thank you for your comments.

15              I guess Mr. Altman has the last  
16      word. Is that safe, do you think?

17              MR. ALTMAN: Well, happy to provide  
18      it.

19              (Applause)

20              MR. ALTMAN: My kids came with me  
21      tonight, I guess.

22              David Altman, A-l-t-m-a-n, and I'm  
23      the lawyer for the petitioners on the  
24      petition.

1           Let me first thank you for --  
2       especially those of you who have listened  
3       and taken the remarks of these individuals  
4       you've heard this afternoon and tonight  
5       seriously. I know for a few members of your  
6       team, there may have been some cause for  
7       making fun of some of these people, but I  
8       think for most of you, this was not a  
9       laughing matter, not a joke, and the kind of  
10      testimony that you have the capacity as good  
11      public officials to understand and  
12      appreciate. And I want you to know that I  
13      appreciate the kind of attitude the U.S. EPA  
14      has displayed here, for the most part, as  
15      compared and contrasted with in recent years  
16      what we've gotten out of the Ohio EPA.

17           I've been around the environment in  
18      Ohio since 1969. I was on the first  
19      oversight committee of the first Ohio EPA.  
20      And I've seen changes even since the Rhodes  
21      Administration, which most would not  
22      consider the high watermark in the  
23      environment in the world.

24           But nonetheless, we are at a low

1 point, and I'm trying to reconcile in my  
2 mind in my final comment to you today and  
3 tonight how it is we seem slightly to have  
4 ships passing each other in the night on a  
5 few issues, less so in air, more so, maybe,  
6 in RCRA, as I said earlier today, with all  
7 due respect to the very hardworking RCRA  
8 people, because I know many of them are very  
9 fine public servants.

10 And one issue that I know I want the  
11 record to reflect is that when you came to  
12 Ohio and the massive expenditure of your  
13 limited energy and time and your own limited  
14 resources, you did not do what we begged you  
15 to do. And we don't take this personally at  
16 all, but we've got to point it out. You did  
17 not talk to these people in a selection.  
18 That's why we gave you those 75 affidavits,  
19 so you could take a cross section of those  
20 and come and talk to some of these people  
21 because we could have maybe gotten you to  
22 understand a little better in the setting in  
23 a few places, talking to the actual people.

24 These are the experts. Their

1     caseload is the plant next door and maybe  
2     the plant down the street. These regular  
3     people know an enormous amount, and I'm  
4     telling you, I've been working with them  
5     since 1969. I know many of you know this,  
6     too, because many of you talked with them  
7     and many of you work within your structure  
8     to help them. So I wanted to make that  
9     comment.

10            You must, you must, before the sun  
11     sets on this project, understand what the  
12     people of Ohio are saying to you, or we will  
13     make sure they come back in greater and  
14     greater numbers until you do understand.  
15     But we -- and I may say this in the public  
16     comment -- know the pressures that you were  
17     under, even though some of you don't mind  
18     those pressures; that there is an awkward  
19     political situation. There has been for  
20     quite a while. So you have limited ability  
21     to deal with things, so -- because of the  
22     political situation in Washington as well as  
23     in certain parts of Ohio.

24            We are mindful of that, but you've

1     got to see what the people have to say, and  
2     so one of the things we're working on doing  
3     is getting you some videos that you can  
4     watch that will take you into the setting of  
5     people who could not be here and create a  
6     record, which I hope will lead to the reform  
7     of the Ohio EPA. And I know some of you  
8     don't think that the reform is necessary in  
9     certain areas because you know, you know,  
10    you've been out with, you understand the  
11    Ohio EPA, your counterpart. You empathize  
12    with them.

13           I'm here so that you empathize with  
14    these people, because they live, their  
15    children live, with what none of us know,  
16    none of us know, which is the impact that  
17    many of these chemicals have at low chronic  
18    levels, occasional waves of chronic levels.  
19    And I can tell you, I'm a somewhat  
20    successful tort lawyer. I could spend all  
21    my time forgetting this kind of stuff and  
22    just represent injured people, almost any  
23    case in Ohio I want.

24           And, occasionally, we do take cases

1     that are attractive to any lawyer. But the  
2     reason I do this and the reason I'm spending  
3     my time talking to you again is because  
4     prevention, prevention, of the exposure is  
5     what the laws are about -- and you know  
6     this -- for they are prophylactic, they are  
7     preventative. They are meant to be enforced  
8     in a way that will protect these people.  
9     And these people, Arnold, you don't know,  
10    except maybe by phone; Bert, even though  
11    you've been down here, you don't know,  
12    except maybe by phone.

13           That doesn't mean you all haven't  
14    done good things to help, but that does mean  
15    you don't understand them the way you  
16    understand your counterparts at the state  
17    agency, and that's what we have to break  
18    through in this very serious petition.

19           Also -- there's just two other  
20    points. We have confused the symptom with  
21    the problem. I know this because you are so  
22    close in your reports, even your RCRA  
23    report, which says, you know, everything's  
24    fine, in so many words. Even your RCRA

1     report, you are so close to pointing out  
2     what we know. It's just that your  
3     conclusions, we respectfully think, are  
4     slightly off.

5             The symptom of the problem -- a  
6     Vernay Laboratory, to pick one of many, as I  
7     did earlier today, is not the problem. The  
8     problem isn't that they missed at Vernay.  
9     That's certainly a problem for the people  
10    that live around Vernay. The problem is how  
11    come there's a pattern of misses? You see,  
12    whereas you say, "Well, the well-known and  
13    hazardous waste sites are being properly  
14    inspected," begs the question, if I'm using  
15    that phrase properly, begs the question, of  
16    what about the sites that are RCRA sites  
17    which have defied the corrective action  
18    process or other processes that they should  
19    have undergone? What about these things?

20            And there is a missing -- and when  
21    Bert says, "We're doing enforcement," thank  
22    God you are, for the people who live around  
23    these sites. But many of the people who  
24    live around these sites are smart enough to

1 connect the dots -- that's one of the  
2 reasons they are here -- and understand that  
3 if the site next door is okay, but the site  
4 next to the stream my children play in  
5 isn't, then I haven't accomplished  
6 everything.

7           There's no substitute for a state  
8 agency that is doing its job with federal  
9 oversight, and that has to happen by  
10 something happening to this state agency.  
11 You must, we pray, revisit, especially in  
12 RCRA and water, the mistakes of confusing  
13 the problem -- the symptom for the problem.  
14 The problem is the breakdown. And that's  
15 the final thing.

16           The final thing is it's like the  
17 NRC, Nuclear Regulatory Commission, used to  
18 find -- years ago I had the dubious honor of  
19 spending two years of my life helping the  
20 City of Cincinnati figure out what to do  
21 about the Zimmer nuclear power station,  
22 unpaid chairman of the City's environmental  
23 advisory council. And I know you all give,  
24 many of you, tremendous amounts to your



1 community as well.

2 But the question was were each of  
3 these little things, losing 4 to 8 million  
4 quality control documents, having hardware  
5 problems in the steel, subgrade unverified  
6 steel, having hardware problems, having  
7 paperwork problems -- were these things each  
8 individually the problem, or was there an  
9 overall breakdown at the facility?

10 And finally the conclusion was there  
11 was an overall breakdown. In other words,  
12 for years we confused each problem, each  
13 symptom, of an overall breakdown with the  
14 problem. When we finally put it together,  
15 we realized there was a total breakdown of  
16 quality assurance, QA, QC, quality  
17 assurance, quality control, in building that  
18 facility.

19 There is a total breakdown at the  
20 Ohio EPA of the mission, a subtle change  
21 where the mission got changed from the  
22 mission of protecting health and the  
23 environment, the prophylactic, the measures  
24 that our laws are meant to offer, into a "We

1 are here to protect the permit holder, who  
2 is our customer." Now, they vigorously deny  
3 this. But we have shown you in the  
4 petition, in our facts, that you have not  
5 addressed in your report, which I somewhat  
6 understand, evidence of that cultural change  
7 within the agency. And I know you're not  
8 management gurus and most of you didn't go  
9 to Harvard Business School, but that is the  
10 message that we spelled out for you.

11 And we must ask that -- when you  
12 write your final report, this is your last  
13 best chance to do this right for the Ohio  
14 EPA. If we have to find a measure that  
15 allows you to be able to do what needs to be  
16 done politically, we will work with you on  
17 doing that. But when our final testimony is  
18 in, that's what you're going to have to  
19 confront. And we certainly pray and hope on  
20 behalf of these people that you don't give  
21 me and my counterparts more tort cases to  
22 handle.

23 That's great for business for a  
24 trial lawyer. It's not what you are about,

1     what these people are about, and, frankly,  
2     what my law firm and I are about in this  
3     process. Thank you very much.

4             (Applause)

5             MR. GONZALEZ: Thank you,  
6     Mr. Altman. Thank you very much for your  
7     comments.

8             I'll assume, then, that we have no  
9     other comments for this evening, and,  
10    therefore, we will bring this proceedings to  
11    a close.

12            Just, I guess, some final steps  
13    before we actually say thank you, but I  
14    guess you know that we need to go back, we  
15    need to review the comments. We need to  
16    respond to the comments. We need to make a  
17    final report, and I know that many of you  
18    will be looking forward to that.

19            Also, we made a promise earlier  
20    today in the session in the afternoon that  
21    upon knowing pretty close to when we'll have  
22    those transcripts available to the final  
23    draft -- or to the final report, we will  
24    post that on the Web site.

1           So look for it. Give us a few weeks  
2   or give us a little bit of time, and we will  
3   begin to send some messages to you on our  
4   Web site that here's where we are in the  
5   process, you can look forward to probably X  
6   date for that information at the repository  
7   on the Web site.

8           With that, ladies and gentlemen, we  
9   deeply, deeply thank you for the time. I've  
10  noticed that some people have been here as  
11  long as we have. And so we know your  
12  commitment to what you want and what you  
13  want for your state and your communities  
14  and, most importantly, your families.

15           And thank you very much, and have a  
16  safe trip home.

17                               --O--

18   Thereupon, the proceedings of November 13,  
19   2001, were concluded at 9:22 p.m.

20                               --O--

21

22

23

24

## 1 CERTIFICATE

2 I, Christine-Ann B. Marr, RDR, a  
3 Notary Public in and for the State of Ohio,  
4 do hereby certify that I reported the  
5 foregoing proceedings and that the foregoing  
6 transcript of such proceedings is a full,  
7 true and correct transcript of my stenotypy  
8 notes as so taken.

9 I do further certify that I was  
10 called there in the capacity of a court  
11 reporter, and am not otherwise interested in  
12 this proceeding.

13 In witness whereof, I have  
14 hereunto set my hand and affixed my seal of  
15 office at Columbus, Ohio, on this day  
16 of , 2001.

17

18 Christine-Ann B. Marr, RDR  
19 Notary Public, State of Ohio

20 My commission expires: January 21, 2003

21

22

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